C-D
4017

University of California General Library/Berkeley

Regional Cultural History Project

Stephen W. Downey

STEPHEN W. DOWNEY: CALIFORNIA WATER AND POWER ATTORNEY

An Interview Conducted By

Willa Klug Baum

Berkeley
1957

Stephen W. Downey, middle 1930's.

All uses of this manuscript are covered by an agreement between the Regents of the University of California and Stephen W. Downey, dated May 13, 1957. The manuscript is hereby made available for research purposes. All literary rights in the manuscript, including the exclusive right to publish, are reserved to the General Library of the University of California at Berkeley. No part of the manuscript may be quoted for publication except by written permission of the Librarian of the University of California at Berkeley.

INTRODUCTION

Since 1909, Stephen W. Downey has been engaged in legal work in Sacramento. Beginning primarily as a personal injury and criminal lawyer, he advanced through a series of positions with various public districts concerned with water and electric power to eminence as one of the leading water attorneys in the state. His work with public districts brought him into issues involving public vs. private water interests, the relations between local districts and the state and federal governments, and public districts vs. public utilities. And because water is at the heart of California's economy, Sacramento is the capital of the state, and his brother, Sheridan Downey, was United States Senator from California, Stephen Downey, though essentially nonpartisan, was close to state politics.

Mr. Downey, slight, white-haired, quick-moving, was 71 years old at the time the following interviews were tape-recorded in his large office in the law firm of Downey, Brand, Seymour & Rohwer located in downtown Sacramento. Though still actively engaged in his law practice, he took time out for six recording sessions from October 1956 to January 1957. A quiet-spoken, friendly man, his gentle modesty almost belied his high reputation until one became aware of the keen mind behind his unexpected humor and easy speech.

In one letter regarding the then-proposed interview he wrote, "I do not have enough imagination to think anything in my life is of historic value to California. I have four children and eighteen grandchildren that are my only claim to immorality (sic)." Perhaps a part of his influence also lies in his conciliatory nature, his insistence on giving all his associates their due credit, and his unwillingness to say a bad word about anyone.

This series on interviews was tape-recorded and edited by Willa Baum as part of the work of the Regional Cultural History Project, directed by Corinne L. Gilb. Associate Justice Jesse W. Carter of the California Supreme Court recommended Mr. Downey as an able participant in much of the major water and power litigation in California.

Willa Baum

University of California Library, Berkeley
Regional Cultural History Project

May 3, 1957

TABLE OF CONTENTS

INTRODUCTION

BIOGRAPHICAL 1

1. Parents and Childhood 1

2. University of Michigan Law School 9

3. First Job--An Attorney with Devlin and Devlin 17

4. Private Practice--In Partnership with John F. Pullen 23

5. Entrance Into Water Work 27

6. Reorganization of the Firm 30

7. Marriage and a Family 31

CALIFORNIA STATE BOARD OF RECLAMATION 37

1. Formation of the Sacramento-San Joaquin Drainage District 37

2. Efforts to Get Federal Funds for Flood Control 42

3. Refinancing the Assessments 53

4. Duties of the Board of Reclamation 65

MERCED IRRIGATION DISTRICT 80

1. Legal Cases 80

2. Refinancing the District 94

MADERA IRRIGATION DISTRICT 105

1. Miller and Lux vs. Madera Irrigation District, 1933 105

2. Negotiations to sell Friant Dam Site to the United States 108

3. The 160-Acre Limitation and the Bureau of Reclamation 111

IRRIGATION DISTRICTS ASSOCIATION 117

SACRAMENTO MUNICIPAL UTILITY DISTRICT 123

1. Formation of the Sacramento Municipal Utility District to Provide Water 123

2. First Bond Issue 126

3. Bond Validation 133

4. Valuation Proceedings Before the Railroad Commission 137

5. Negotiations to Purchase Power from the Central Valley Project 148

6. Management of SMUD 155

7. Hydroelectric Development on the American River 161

RECLAMATION DISTRICTS WORK 166

1. Present Problems of Reclamation Districts 166

2. Reclamation District 108 171

3. Reclamation District Assessments 175

4. Comparison Between Irrigation Districts and Reclamation Districts 180

5. Refinancing Problems of Irrigation Districts and Reclamation Districts 186

AMERICAN RIVER FLOOD CONTROL DISTRICT ACT--1927 193

CENTRAL CALIFORNIA IRRIGATION DISTRICT AND TULE LAKE IRRIGATION DISTRICT 197

SACRAMENTO PORT DISTRICT 202

COMMENTS ON THE CALIFORNIA WATER DEPARTMENT 206

SACRAMENTO RIVER WATER RIGHTS 211

COMMENTS ON THE LEGAL PROFESSION 220

1. State Bar Examination 220

2. The State Bar 223

3. Loyalty Oath for Attorneys 225

4. Ethical Problems 227

5. Appointments of Judges 234

6. Trials 238

7. Stephen W. Downey's Most Significant Cases 247

8. Office Organization of Downey, Brand, Seymour and Rohwer 249

9. Charity Work 263

COMMENTS ON POLITICS 266

1. A Supporter of Hiram Johnson 266

2. Sheridan Downey, United States Senator 267

3. Contact with California Governors 279

4. United States Senators Thomas Kuchel and William Knowland 283

CIVIC WORK 289

APPENDIX 296

1. Further Biographical Information 296

a. Childhood in Laramie 296
b. Children 304

2. List of Major Cases for the Reclamation Board 307

3. Mr. Downey's Three Most Significant Cases 308

PARTIAL INDEX 311

BIOGRAPHICAL

Parents and Childhood

Downey: I was born in Laramie, Wyoming, in 1886. My father was Stephen W. Downey. He was from Maryland. There were six men in the office studying law and three went in the Union Army and three into the Confederate Army. He was a private and became a colonel in the Union Army. Then he came to Wyoming in 1867 and settled there.

Baum: Why did your father come to Wyoming?

Downey: I don't know. I think he was always an adventurer at heart and Wyoming was the frontier. It may have been due to other reasons I don't know about. He was in the office of Col. Thomas of Maryland at that time. Thomas was a controversial figure. He was one of the men who favored the Radicals when they were trying to patch up the Civil War. Strange to say, Thomas was very much a Radical. I don't know whether father didn't agree with him or what it was, but anyway he came out west. He was a visionary, pie in the sky.

Baum: Did he intend to continue as an attorney in Wyoming?

Downey: Yes, but of course, getting out there he immediately began to get into prospecting, gold mining. I think he put down the first oil well ever put down in Wyoming. Nobody believed there was oil there then. It wasn't until long after Father's death that they ever found any. That was the type of man he was. He wasn't very cautious and conservative or shrewd. He was a dreamer and a poet. Mother was born in England. Father was of Irish extraction and Mother was Welsh. Mother came to Wyoming from England, across the prairie by prairie schooner, fought the Indians, or at least ran away from the Indians to keep from fighting them.

Baum: What was her father's occupation?

Downey: I don't know much about him. Her father was Welsh. Mother's mother was converted to Mormonism and came out from England to join the Mormon Church in Salt Lake City. It was wild then. Mother was just a baby in arms. Apparently her mother didn't like the Mormon Church at that time. She didn't

like polygamy. She became an apostate and was driven to Idaho and then to Wyoming where she settled with my mother. Of course, the Mormom Church then was very different than it is now. Mother and Father were married in Laramie; we had a big family. There were twelve of us. I lived in Wyoming until I went to college. Father was quite prominent in the state. He was supposed to be a lawyer but he thought it was more alluring to get out and find gold. He never found any.

Baum: Did he go in for business ventures or did he go out prospecting himself?

Downey: He prospected. They found a vein there, a very famous vein in that part of the country called the Centennial Vein, in 1876, the year of the centennial. It seemed to be a very rich vein of gold and silver. Actually they sold it for a very substantial sum and then the vein played out, a pocket. So Father refunded the money. They've never found that vein since. People are still looking for it.

He lost a lot of money in mining ventures. Mother was really the one in the family who kept things together and kept things going on. Father was one of those men everyone loved. He didn't have a financial success. He had a very adventurous career.

A thing we like to think about, he was the father of the University of Wyoming. That was located at Laramie. That's where we lived so all of us got an education for awhile anyway. I think probably Father is most known for that, although he did many things.

Baum: I read that he was a delegate to Congress from Wyoming Territory.

Downey: Yes, and to show you how visionary he was, he introduced a bill and his supporting speech was in blank verse. There must be thousands of words there, there are some beautiful lines too. That created quite a sensation. Some of the papers made fun of him and some were quite serious about it, but there was a lot of publicity on it at that time. I wasn't born yet,

but I've read some of his clippings. The funny thing about it was that the bill itself was to make paintings of the life of our Savior at the national capital which now has been done, I think, to some degree, but nothing was done about it at that time.

Mother was a woman of tremendous energy, and will power. Father had his financial troubles. Mother was quite a china painter. When conditions got too rough she'd paint china. I remember quite distinctly that Father was very sick before his death and our financial troubles were heavy at that time. I remember Mother painting the china to pay the doctor's bill. We used to call her "the little Napoleon."

Baum: Before your father's death, was the family poor, or well off?

Downey: It depended on Father's fortunes. Very poor sometimes, undoubtedly. I never knew that. But generally we lived well, beyond our means, but we got along. It was a happy family. But Mother was always on the bit, you know, looking out for everything. She had to

be frugal.

Baum: How many brothers and sisters did you have?

Downey: There were four boys and there were six girls. Then there were two half sisters. Father was married twice. His first wife died right after the Civil War before he came out to Wyoming. And Mother took over these two, she raised them all, so she had twelve.

Baum: Where did you come in this order?

Downey: I was ninth. I was pretty well down the line. And then Father died and that left Mother with the whole family to take care of. I was only sixteen and I had three sisters younger than I. One of them was only about two years old and the other was about four or five years old.

Baum: Then who supported the family?

Downey: Oh, Mother. Well, I had an older brother who was then in partnership with Father in the law business and I had an older sister. She was a brilliant girl. She was teaching at the University of Wyoming. She became the head of the Psychological Department there.

She really had a brilliant record in science and literature. She was starred in Who's Who in Science and wrote articles in the Encyclopedia Britannica. She inherited Father's mastery of words.

They were earning money and all of us began to help. I used to have some cows and sell milk; I made money with milk. Everybody did a little work. Mother was the leader all the time, she carried the banner.

Baum: What were the schools like in Laramie?

Downey: Like any other country schools. We had the big, red brick schoolhouse, the only school there. After we got through high school, we could take preparatory work at the University and then do collegiate work at the University. In my case I went through the public school and did preparatory work at the University and for a short time in the collegiate department. I didn't graduate from the University. I wanted to get out and be doing something. I could get admitted to the law school at the University of Michigan without having my college degree.

At school we had a lot of contacts and a lot of fun with the other boys.

In the summer we got out and did work on the ranches. Almost from the time I was able to do it, I was engaged in some kind of outdoor work in the summertime. Sometimes surveying, sometimes tie plant work, sometimes cattle. They had a big tie plant there.

Baum: Railroad ties?

Downey: Yes. We'd pickle the ties.

The University of Wyoming had a museum where they stored the fossils that were dug up around there. That was a great country for paleontologists. Three summers I dug up brontosaurus, some little bones and a good many of the larger bones. I remember we got so much a month. We'd camp out. There was a quarry where we were uncovering the bones of these animals. We'd take them up in plaster of Paris casts and haul them down by horse to the University. There are some very famous specimans there. That had the lure of adventure, uncovering these fossils.

University of Michigan Law School

Baum: Why did you decide to be an attorney?

Downey: Well, Sheridan and I both liked the speaking and all the things that we thought went with the law.

Baum: Sounds like you visualized yourself as a trial lawyer?

Downey: Exactly. My idea was to be a trial lawyer.

Baum: Why did you select the University of Michigan?

Downey: In those days Harvard and Michigan were outstanding.

Baum: Had your oldest brother gone to Michigan?

Downey: No, he stayed right there in Laramie, went into Father's office and picked it up from there.

And Sheridan and I wanted to get out and see the world by that time. We knew we had to get somewhere away from Laramie and Michigan had a great lure to us because of the football team and because it was an outstanding legal institution. So we both decided to go there together and we did.

We had to do a little work on the outside to get some money to help Mother out. We paid most of our own expenses. So Mother wanted to know how much we were paying for board and lodging. "Why, I can

take the whole family back there and give them an education for that." And she did. She came back and we paid her then. That brought the opportunity to my sisters to attend the University at Ann Arbor. We called that "Mother's Hergira." I don't remember if she stayed there a year or two years.

Baum: What kind of work did you and your brother do to support yourselves there?

Downey: I think I did surveying work and this fossil work in the summertime. We loved to work on the ranches near Laramie.

Baum: What sort of an education did you get in the law school at Michigan?

Downey: Purely legal.

Baum: You had no outside classes?

Downey: Well, football practice, and we'd go to the football games.

Baum: I take it you were very interested in athletics.

Downey: Oh, I was, I was tremendously interested. Of course, we did a lot of the outside collegiate work at the University. We were having a fight there about the

control of athletics. So I went on the Athletic Board of Control. Non-fraternity men generally did not get elected. That was quite an election. Those posts are very much coveted. When I got through with that the regents weren't satisfied with our handling of the athletic situation so they fired us all. But I had a lot of fun there.

Baum: Were you active in student affairs?

Downey: Yes.

Baum: Did you have to do as much homework as the legal students seem to now?

Downey: It was plenty hard, all right. I think we did, but there were a lot of the college activities that more or less centered around the work you were doing and the professional courses. There was the debating society, toastmasters' club, the barristers' club. There were a lot of them.

Baum: Did you participate in all these things?

Downey: I tried to.

Baum: And your brother also?

Downey: I think so. I say he and I went together. As a

matter of fact he was in the class ahead of me. But we lived together in the same building. Yes, I'd say he participated about the same extent as I did. We had the Rocky Mountain Club.

Baum: Did you have a chance to join any fraternities or social organizations at Michigan?

Downey: Many social organizations, but that was another thing, I was one of these anti-fraternity guys there. I was always kind of a Bolshevik. There was a fight at the University of Michigan at that time between the independents and the fraternity men. So I was what they called "a barbarian," an independent. Those things don't mean a thing in the world to me now. So I didn't join a fraternity.

Baum: Do you feel that was a loss to you in contacts?

Downey: No, I don't think so. I think my contacts were very, very rich. I've never been able to go back to Michigan for any of the reunions, but those friendships were very dear.

Baum: In your law school training did you have any

practical training?

Downey: None at all. I think we had one moot case, that's all.

Baum: You didn't do any outside work in law offices?

Downey: No, I was too busy wanting to get out in the country to work on some matter where I could get some money. No. I should have done that.

Baum: I was wondering what you thought of your son's training. He's a recent attorney.

Downey: He certainly came into this office and had no trouble at all like I had when I began. He's a graduate of Stanford. I think that's probably due to better training now. I think I knew the fundamental principles of law, constitutional limitations, for example.

Baum: How valuable did you think that was to you later on, your fundamental principles?

Downey: Oh, very valuable. When you got into the cases that involved more important questions, it was highly important to have that background. I'm sure I got along very well after I got through some of the routine of a law office. I liked any case that presented

a big problem, I enjoyed the principles of law involved. I had a lot of theoretic training in Michigan.

Baum: Did it take you very long to learn those routine things? How long until you were valuable?

Downey: I think I became valuable in about a year. But I think I had less practical experience than most young boys had. In Laramie you didn't know much about business.

Baum: Were there any professors at the University of Michigan who especially impressed you?

Downey: Yes. I was very close to Professor Bates. I think he acted as the president of the university later. He was the dean of the law school too, I know.

There were a number of earlier distinguished Michigan men who were not there at that time. Cooley was one of the great legal authorities and we studied his work on taxation and the Constitution and other things.

I had a professor of elecution, Professor

Trueblood. I always liked him. He conditioned me in elecution. We always thought it was quite a joke. At that time I was one of the varsity debaters. Sheridan was too.

Baum: Were the students interested in politics or social issues?

Downey: Yes. I think every man attending law school had an idea he had to get into politics.

Baum: Did they join student political clubs?

Downey: Yes. They liked to run for class offices, you know. We used to think we had to be politicians.

Baum: On the campus? Campus politicians?

Downey: Yes, campus politicians.

Baum: Was there any interest in national politics?

Downey: Yes, we ere very interested in that. We had a number of very distinguished speakers at our student forum and you could get in on that and meet them. You came into contact with a great many national celebrities at that time. Lincoln Steffens. William Jennings Bryan. Gompers, LaFollette, etc. You didn't know them well. Maybe talk to them at a meeting.

A cocktail affair. I don't remember if we had cocktails affairs then. We went to the saloons often enough. But you meet them, that's about all you can say. Of course, you're impressed sometimes by their speech. We had some very remarkable speeches there. One I remember of Bob LaFollette's. We were in all that more or less by reason of our contact with the law school.

Baum: Were you and your brother very close?

Downey: Yes, we were very close.

First Job - An Attorney with Devlin and Devlin

Downey: On graduation from law school I was going to Nevada because I had been in Nevada surveying. I thought I might be United States senator there, among other things.

Baum: You were an awfully young man to be thinking of becoming a senator.

Downey: Yes. That didn't bother me then. I might have considered being President of the United States. I've learned a lot of things since I've gotten older, but let me say to you because you're a young woman, there's nothing like youth, energy. I don't like to get old. I haven't any philosophy for getting old.

Baum: Age has the wisdom, the know-how.

Downey: Well, I sometimes wonder if we're as wise as we think we are. But the world was no bother to me at all at the time I graduated from college.

Baum: Were you planning to set up your law practice in Nevada?

Downey: I was going to Goldfield, Nevada. I had been at Rhyolite and Bull Frog and Tonopah and Las Vegas-then-

you wouldn't believe it. Rhyolite is right on the Amargosa Desert near Death Valley. They are all of them pretty barren, but anyway there was a lure to them. I wouldn't want to go back there now anymore than I'd want to go back to Wyoming. When you could get into anything you wanted besides getting stock in a gold mine, it was well worthwhile. I just stayed there long enough to see that the country was broke. Then I managed to beat my way to California, partly by freight.

Baum: Why did you choose California?

Downey: It was on my way. I never had any intention of going to California originally.

Baum: You had no friends here?

Downey: I didn't know a soul in California. California wasn't too far from Nevada so I came to San Francisco. I hunted up one of my old class mates there and he said he'd heard somebody up in Sacramento was advertising for a lawyer. So I came to Sacramento and asked this man, Devlin, for a job. The firm of Devlin and Devlin was the large firm then.

Bill Devlin, one of the members of the firm, was the man I talked to. He was a very nice fellow, rather pompus. He said, "Young man, what do you know about our titles here? What do you know about the Sutter title?" I didn't know anything about titles. "Well, you've got to know some of these things." I said, "Well, I know about Constitutional limitations."

He said, "Well, I'll tell you what I'll do. I'll give you fifty dollars a month. You can sit in that back room there."
I said, "All right, but I want five dollars in advance." He said, "Well, you talk to the cashier out there and see if she'll give you five dollars." So that was that interview.

I went out and talked to the cashier. There I was getting somewhere because she was a very pretty blonde girl and I thought I could talk to her all right. So I said, "I'd like five dollars in advance. Mr. Devlin said I could come into his office." She pulled out the drawer and gave me five dollars.

So then I sat in that back office for I don't know how long waiting for somebody to talk to me and nobody did. Then one Sunday Devlin came down and saw me and after that I had no worry about not working. But every raise I got there I really had to work for it. Seventy-five dollars a month, finally I got up to a hundred and twenty-five dollars a month and he said, "That's all. We don't go any higher than that."

So then I went out by myself. I had the satisfaction a few years later of having him come to me and offer me a partnership with him going in on a combination of two firms. By that time, I preferred my own work.

Baum: You said that when you took this first job you didn't know anything about law. How did you learn?

Downey: Matters kept coming to you and you had to learn.

Baum: Did you sit in that back room and read old cases?

Downey: I couldn't even read cases. I have to laugh. In attaching property there are certain things you have to execute right away and there's always a summary proceeding. You have to do it right away, somebody's

in a hurray to get somebody's property attached before they can take it away. So shortly after they had begun to give me some work there, somebody came into the office one Saturday morning and wanted an attachment. There was nobody there on a Saturday morning, just myself. Heavens, I didn't know what to do about an attachment, but I got out a lot of forms that were there. Of course, I took the case. I noticed the forms read that "whereas _____, Judge of the Superior Court, has set his hand and seal." It isn't a paper to be signed by the judge at all, it's a paper to be signed by the clerk of the court, it just says "in witness thereof....." It's a ridiculous thing, but it's the way those forms are made out. So I got all these papers together and went over to see the judge and asked him to sign the paper. He said, "Why, I don't sign that paper." I said, "Well, it says here..." All I knew was what it said on the form. (laughter) Of course, he had a right to get irritated about that, but he signed it in the blank there. He and I

talked about that years later. So that's the way it went.

Baum: What kind of jobs did you handle when you were working for Devlin and Devlin?

Downey: Devlin and Devlin had a very big practice even for those days. I got just the work they got. Estates. I did a great deal of corporate work at that time. I assisted them in a great many trials. I helped Bob Devlin get out a new edition of Devlin on Deeds.

Private Practice--In Partnership with John F. Pullen

Downey: Then I opened up practice with John F. Pullen in 1911 about June. We had a lot of fun practicing law.

Baum: What was his background?

Downey: He was from Auburn. He later became Presiding Justice of the District Court of Appeals. A man with a wonderful personality. Everyone liked Jack Pullen. He had been raised in the state and he had some contacts here. He was raised and went to school in Auburn.

The two of us got out and we got business all right.

Baum: Was he a young man about your age?

Downey: No, he was a little older than I, not much. Close enough so we were pals.

Baum: And he had worked for Devlin and Devlin too?

Downey: No, he had worked for some other firm here. We went into partnership and then my brother came along later, in 1915 I think.

The cases we got were the cases a young lawyer gets if you have a lot of energy and not much money.

We started out with a bank account of fifty dollars. Shortly after, the bank called up and fortunately they got Pullen on the phone instead of me and said, "Your account is overdrawn." He said, "My goodness, I must have made a mistake in addition or subtraction." (laughter) Well, we had many such cases of mistakes in addition or subtraction.

We didn't have any books in those days. If some money came in, we put it in the old safe that Jack's father left him and if you wanted some money you'd go to the safe and take out a dollar or two (if you could find them) and put down an I.O.U. and by and by the box got all filled up with I.O.U.'s and then we'd sit down some Saturday afternoon and I'd find an I.O.U. he gave for $5 and he'd find one I gave for $5 and we'd cancel them and throw them away. Finally, we'd get tired of that and go out and have a beer.

We were just two young lawyers, two kids.

Baum: What kind of work came in for you?

Downey: Most anything. We had to kind of stimulate it a little bit. We had a few damage cases that a young

lawyer can usually get if he wants to try the case. They weren't automobile cases. They were cases involving master and servant. You can get them and then if you settle them for good prices or if you try them and get good results you get some more of them.

We got along. It was a rather inferior grade law business. We said if we ever got hard up one of us would go out and work and the other would stay and practice law and the man who worked would support the firm, but we never had to do that. Then, of course, things got better, we got more business.

Then came the war.

Baum: Did the war help your business?

Downey: Well, I went in right from the start, I went right to the first officers' training camp in May 1917.

Baum: Did Mr. Pullen go in or did he keep up the firm?

Downey: He couldn't pass the physical. Then, when I got gack from the war, Sheridan had come into the firm by that time and things were pretty well

rolling, changes in the social structure.

Entrance into Water Work

Baum: I wondered how you got started on water law.

Downey: When I was in Devlin's office they had a great deal of work involving reclamation districts. That was "fighting the wolves," as we used to say, fighting the flood waters. I got interested in that there. Way back about the time I left that office I was looking to the Reclamation Board having a lawyer to represent them at that time. I just thought that would be nice work to have.

Baum: Had you specialized in water within Devlin and Devlin's office?

Downey: No, I didn't really know anything about water then, they had no water work and I had none until we got to our very difficult flood control projects. After I got with the Reclamation Board I did that work, of course, and that became, not quite a speciality, although it certainly took a lot of my time. Then, having worked there for a number of years, and I think I made a success of that, especially in getting the relief that was given to us by the federal

government on flood control, they asked me to come to Merced. That was real water work. Riparian right cases, drainage cases. I became at that time more and more...I don't want to say I was a specialist, I don't think I am now. But from my work at Merced came all these other matters involving water and I branched out. It's so heavy now I can't even follow it.

Baum: Do you think you went into water because of chance, or was it from an interest?

Downey: Certainly as far as the Reclamation Board was concerned, I went with the board because I liked what they were doing. Really, the development of the flood control project here in this valley and the story that goes with it of the hydraulic mining and all those things, that was certainly one of the big public enterprises of that time. When I found I could get to act for the board I was very glad to get the appointment.

Baum: When you described your early interest in law it sounded to me like you thought of yourself as a criminal lawyer.

Downey: We did a lot of criminal work. When my brother went in with us, he was a very brilliant trial lawyer, no body better if he had stuck to it. He tried many criminal cases and I tried a number too. They weren't the criminal cases you get now so much, they were cases generally rather sensational in nature, attracting a lot of attention. We tried a number of those cases, which was excellent experience for trial work. I don't, of course, try any criminal cases now and haven't for a number of years. When I got to the Reclamation Board the number of cases in the Appellate Court was so great it took most of my time, I won't say all of it, but certainly a lot of it, arguing cases on appeal.

Baum: Did you enjoy this criminal trial work?

Downey: Oh, I loved it. We had two or three rather sensational cases. I remember one, a woman shot her lover. That was real dramatic. Another one, a young sailor shot his foster father. Those were wild cases. I had a number of them. Sheridan had a great many and he loved that kind of work at that time.

Reorganization of the Firm

Baum: What was John Pullen's part in the firm?

Downey: There were John Pullen, (Jack), Sheridan, and I. Downey, Pullen & Downey. I went to war and that left Jack Pullen without anybody here, and Sheridan. Sheridan got more and more into criminal work, being associated with another lawyer here. They had a big practice and he was making money but he didn't like the way he was making it. Then Jack Pullen, by the time I got back from war he decided he wanted to go on the bench. So we had him appointed Superior Judge and then later on there was a vacancy on the District Court of Appeal and he made the run and was elected presiding justice. He was the type of man everybody loved. Wonderful man. So that botched up that firm and Sheridan, he then was out buying ranches and farms and orchards and everything he could buy on mortgages.

Baum: By this time both of them were out of the firm?

Downey: Well, that came just a little later as far as Sheridan was concerned. Jack was on the bench

for a while and I was so financially involved on some of Sheridan's paper I had to get out too. So anyway we consolidated our firm with Dunn and Brand--they were an established firm here--and we took into that firm Harry B. Seymour. That was in 1926. The result was this firm, Downey, Brand, Seymour, & Rohwer, although that changed a number of times through the years.

Baum: What were the advantages of consolidating?

Downey: Primarily, as far as I was concerned, I had to get a new start here. I can't tell you how much money I owed. A lot. To banks. Sheridan would sign my name on them. He was very, very generous, but he had no sense of business. So I had to make a fresh start.

Mr. Brand's partner had died and he wanted to make some kind of a reorganization and we just consolidated our two firms and went together. Sheridan has never come back to the law business.

Marriage and a Family

Baum: When did you get married?

Downey: About 1913, my first marriage.

for a while and I was so theoretically involved in some of theoretical paper I had to get out to do anyway so consolidated our firm with Sam and Edmund--they were an established firm here--and we took care that firm's carry-on. That was in 1924. The result was this firm, Conway, Edmund, Lerman, Sheer, although that changed a number of times through the years.

Q: What were the circumstances of consolidation?

Conway: Interestingly, as far as I was concerned, I built a new start for me. I couldn't tell you how much money I made. A lot. To me. Sheer in which I was my care on them. He was very, very generous, but he had no sense of balance. So I had to make a fresh start.

Mr. Fraenkel's father had died and he wanted to make some kind of a transition and we just consolidated our two firms and went together. Edmund was never too involved in the law business.

Family and Early Life

Q: When did you get married?

Conway: About 1913, my first marriage.

Baum: How did you meet your wife?

Downey: She was my stenographer. While I was in France she died in the flu epidemic.

Baum: And you had children by that time?

Downey: Two children.

Baum: When were they born?

Downey: Stephen, my youngest boy, was one year old when I went to France in 1916. The other boy, Jack, was about two.

Baum: Was your wife from Sacramento, a local girl?

Downey: No, she was from Iowa.

Baum: You mentioned before that when your wife died while you were away at the war, your sister came to take care of your two children.

Downey: Then I remarried.

Baum: What was your wife's maiden name?

Downey: Persis McIntire. She was working in the State Library at that time, when I met her. Her mother and father had come out here. They were staunch Vermonters. We had many a sword to cross, you know, on the political campaigns.

[illegible]: How did you meet your wife?

[illegible]: She was a photographer. [illegible] for the Marine [illegible] she died in the flu epidemic.

[illegible]: And you had children by that time?

[illegible]: Two children.

[illegible]: When were they born?

[illegible]: Stephen, my youngest boy was one year old when I went to Europe in 1916. The other boy, [illegible], was about two.

[illegible]: Was your wife from Sacramento, or [illegible]?

[illegible]: No, she was from Iowa.

[illegible]: You mentioned before that when your wife died while you were away at the war, your sister came to take care of your two children.

[illegible]: [illegible] remarried.

[illegible]: Did you know Mrs. [illegible] maiden name?

[illegible]: Gerald Coleture. She was working in the Main Library at that time, when I met her. Her mother and father had come out here. They were [illegible] Swedish. He was many a round in [illegible] I know, on the political campaigns.

Baum: What was her father's occupation?

Downey: Her father was a kind of real estate man and interested in mines and so forth. He had the adventurer in him too, but not exactly the same way my father had. He was more conservative. Very scholarly. Should have been a college professor.

My wife herself was a graduate of Abbott Academy. That's a girls' school near Boston. She came out here shortly after her graduation.

Baum: Did she continue to work after you were married?

Downey: No. She continued to work, but not in the same line. She took over the two boys. Then we followed up with two more, both girls. There was plenty to do. Most of the time she was at home taking care of the children. Pretty soon they all grew up, sent to college, then Jack came in here with me. Stephen went into the army, and is now a colonel, and the girls got married. And now they are pretty busy too. One of them has five children and another four. Jack has eight.

Baum: Did your wife have time to be in on woman's club

Q: What was your father's occupation?

Answer: My father was a kind of real estate man and interested in this and so forth. He had the adventurer in him too, but not exactly the same way my father had. He was more conservative, very scholarly. Should have been a college professor.

My wife herself was a graduate of Abbott Academy. That's a girls' school near Boston. She came out here shortly after her graduation.

Q: Did she continue to work after you were married?

Answer: No. She continued to work, but not in the same line. She took over the two boys. Then we followed up with two more, both girls. There was plenty to do. Most of the time she was at home building up of the children. Pretty soon they all grew up, went to college, then Jack came in here with me. Stephen went into the army, and is now a colonel, and the girls got married. And now they are pretty busy too. One of them has five children and another four. Jack has eight.

Q: Did your wife have time to be in on women's club

activities or anything like that?

Downey: She never did a great deal of that. She is very sociably inclined, but not a clubwoman.

Baum: Was her family Democratic?

Downey: Her parents were Republicans from Vermont. When my brother ran as a Democrat for United States Senator, that was a hard problem for the McIntires. Finally they voted for him. At least, they told me they did. They said they'd never done that before in their lives, they voted for a Democrat and that took a lot of soul searching for them. They were living with us right at that time, for quite a number of years.

Baum: And is your wife a Republican or a Democrat?

Downey: Well, I thought she was a Democrat. Of course she supported my brother. But I think she renigged a little bit the last campaign. I am pretty sure she voted for Eisenhower in November, and I think she did in the election before that. But I still think she's good material for the Democrats.

Baum: What are your hobbies? What do you do with your spare time?

activities or anything like that?

Owner: She never did a great deal of that. She is very socially inclined, but not a clubwoman.

Farm: Was her family Democratic?

Owner: Her ancestors were Republicans from Vermont. When my brother ran as a Democrat for Congress, then Senator, that was a hard problem for the Republicans. Finally they voted for him. At least, they told me they did. They said they'd never done that before in their lives, they voted for a Democrat and that took a lot of such searching for them. They were living with us right at that time, for quite a number of years.

Farm: And is your wife a participant in a Democrat?

Owner: Well, I thought she was a Democrat. Of course she supported my brother. But I think she resigned a little bit the last campaign. I am pretty sure she voted for Eisenhower in November, and I think she did in the election before that. But I still think she's good material for the Democrats.

Farm: What are your hobbies? What do you do with your spare time?

Downey: Well, I used to ride horseback a good deal. The children all rode horseback. It was a family affair for us. Stephen was quite a polo player and steeplechaser. I had a number of accidents. I broke pretty near everything. It was the only time I was ever laid up. I broke my head and I broke my back and I broke my collarbone. So finally they said, "We're not going to pay any more accident damages for horseback riding," and they cancelled my accident policy, so I quit riding.

But the whole family rode. It was the topic of conversation at the table everyday.

Baum: Did you keep up any of your other athletics?

Downey: Well, I have done a good deal of walking. I don't play golf, though. I played tennis up to a number of years ago. Now, when I get out it's generally walking. But I used to walk seven or eight miles in a day, and I'd take long walks in the summertime. We used to walk every summer from here up to Lake Tahoe, then around the lake, Jack Pullen and myself. I don't do that anymore.

Baum: Did you have time to join any service clubs?

Downey: Oh, I belong to Rotary, and the Sutter Club and Grange, but I haven't been a joiner.

Baum: You said your father spent a lot of time reading. Was that a hobby with your family too?

Downey: I used to do a great deal of reading, but the last few years there's too much television on.

CALIFORNIA STATE BOARD OF RECLAMATION

Formation of the Sacramento-San Joaquin Drainage District

Baum: Getting back to your legal career in water work, I think you went to the Reclamation Board in 1923 as their attorney.

Downey: Yes, I'm quite sure it was 1923.

Baum: I wonder if you could fill me in a little bit on the background of the Reclamation Board and the Sacramento-San Joaquin Drainage District before that date.

Downey: The reason for the formation of the Reclamation Board was the devastating floods that had occurred in 1907 and 1909. The 1907 flood was the one we call our "project flood", that's the flood according to which we have made all our plans.

Baum: That was the biggest one?

Downey: There certainly was a bigger one of the Feather River last winter and there have been from time to time in certain sections of the river floods that exceeded it, but we think of the 1907 flood as the "project flood." We all think that way back in 1862

there was still a bigger flood, but accurate records are not available.

Baum: Were you here in 1909?

Downey: Yes, I had just come out to California. I went to work in the law office where they were dealing with many problems concerning the 1909 flood such as forming reclamation districts, building the west levee of Sutter Butte, by pass Project Number 6 and the east levee of District Number 1500, and steps that were being taken by the landowners to try to meet those flood conditions, etc.

Then in 1910 the California Debris Commission, a misleading name because it is really a federal commission which had been set up way back in 1893 to take care of the damage done under hydraulic mining, rendered this report which aimed at setting up a coordinated plan that would take care of floods, restore the navigability of the river which had been damaged by hydraulic mining, and enable the lands to be reclaimed under conditions that the property owners could bear. That recommended that the work be done

at a cost of one-third to the state, and one-third to the federal government, and one-third to the property owners. It was estimated then at thirty-three million dollars. I hate to tell you how much it has cost since then. There had been a number of other projects discussed. There had been a project, the Dabney Plan, called the "main river project" under which from an engineer's point of view you just take care of the floods in one way, through the river itself. Then, there was the "by-pass project", whichwas the "Grunsky project." Of course, the engineers had been working on this for a long time. This by-pass project contemplated that there would be passes which would really be auxiliary rivers and they would take care of the excess water under flood conditions. That was the plan finally approved by the California Debris Commission.

The United States was interested in the navigation of the river although it's not an interstate river.

Baum: That was the only thing the federal government was interested in in those days, wasn't it?

Downey: Well, we argued that there were lots of other things that they should be interested in, but they were primarily concerned with the navigation of the Sacramento River. The state was interested in that too. It was an important artery of commerce.

At that time there was no national policy respecting flood control. That came about in 1936.

Baum: You say Devlin and Devlin were handling the reclamation district work.

Downey: Yes, they had by far the biggest reclamation practice in the Sacramento Valley at that time.

Baum: Did they have anything to do with the adoption of this report?

Downey: Yes. But I wasn't up that high at that time. I was one of the privates, so to speak. That date of the report is 1910 and then Hiram Johnson called the legislature into special session in 1911 and the report was approved by the state of California.

Baum: Were you aware of any opposition at that time?

Downey: No, not at that time. I think everybody in the state generally was for it. We ran into a lot of trouble

at a later time, but right at that time the state was for it, Johnson was for it, it seemed to be an answer to our very bad problem there.

Then, the next step was for Congress to take some action and that was trouble right away.

Baum: Where did the Reclamation Board come in?

Downey: They were created in 1913. They were set up, a small board to start with, for the purpose of carrying out this report and also to get some kind of a control agency that reclamation districts would have to follow. For example, one reclamation district would build a levee and its neighbor would build a higher levee. It was just like pushing the vagrants back and forth from one city to another. There was no overriding power.

Baum: One levee would damage the neighboring lands?

Downey: That's right. A levee on one side of the river would force the water onto the other side of the river. It was a very unhappy situation.

The law at that time was that any man could reclaim against flood waters, they were wild wolves and

you shut them off if you could. If you shut them off onto somebody else's land, that was tough luck for them, but it was the law of self-preservation.

Baum: Were the reclamation districts to be required to get an okey from the Reclamation Board?

Downey: Yes, they couldn't raise their levees without going to the Reclamation Board. That's a long, long story but today what the Reclamation Board generally does is to follow the adopted flood control plan in determining whether people should be permitted to raise their levees at all.

Efforts to Get Federal Funds for Flood Control

In 1917 the Reclamation Board went back to Washington to try to get the United States to assume one-third of the costs of the plan.

Baum: Did the board go back?

Downey: Some of the members did. One very active member at that time was V. S. McClatchy, the brother of C. K. McClatchy. They had a good deal of trouble in Washington and many of the details of that are unknown, but they finally succeeded in getting a bill through

Congress in which Congress assumed $5,600,000. That was to be confined to opening the mouth of the river and the construction of wiers, assumed to be the navigation benefits. The total cost of the project was estimated at thirty-three million at that time, but the United States had no intention of assuming a third of that cost.

Baum: Was this because they felt that part of that was not for navigation and therefore out of their realm?

Downey: It undoubtedly was. There were two or three reports on that. One by the Board of Engineers of Rivers and Harbors set forth that the interests of the federal government was purely in the navigation end of it and that any contribution it made should be limited to the navigation feature. The board said that flood control was for Congress.

That was no solution at all but there was one important thing about it. In passing that legislation in 1917 Congress made it a part of the Mississippi Flood Control Bill. We had never been bracketed with the Mississippi and we always felt that we weren't

fairly treated. In fact, practically no rivers in the country were given any consideration at all, but the Mississippi had so much commerce and so many Congressmen and I have no doubt they had many reasons that weren't applicable in California. But the Mississippi Bill in 1917, Section One, dealt with the Mississippi and Section Two with the Sacramento. I had nothing to do with that but I knew about it. We are the only river bracketed with the Mississippi and we are now trying to get other things the Mississippi gets.

Baum: The bill provided more for the Mississippi than for the Sacramento?

Downey: Oh yes, we never got in on any such appropriations as that. Now we're trying to get the stabilization of our banks along the lines of the appropriations for the Mississippi and we haven't got that yet.

Then, we thought we could work well with Major Grant, the grandson of the great Grant, a very, very fine man. He's now a major general. So we went to Congress and asked to have this plan resurveyed.

That was done and that work came to Grant.

Baum: Was he on the California Debris Commission?

Downey: Yes, he was the executive officer, what we called the District Engineer, in San Francisco at that time. Since, they have moved up here to Sacramento.

Of course, our theory was that this whole thing had bogged down financially. The plan was all right, but the costs were not divided properly. So we had to get this report from Grant. That involved all kinds of work. I was a kind of go-between there between the Reclamation Board and Grant.

Baum: What sort of work?

Downey: I suppose liason mainly, just trying to get the view of the landowners and of the Reclamation Board before him. We had all kinds of figures showing that with what the landowners had put in in reclamation districts on their own levees and with what they would be assessed, it was just wiping them out. The whole valley faced bankruptcy. Whether we stated it more strongly than the facts I don't know, but I

thought that way then and I still feel that way now.

Baum: Was Major Grant's problem in this respect to come up with a favorable financial apportionment....

Downey: That's what we wanted.

Baum: It wasn't an engineering problem?

Downey: There were some engineering problems, but not too difficult. Oh yes, he was a very good engineer. Well, in 1925, he came up with the Grant Report which is really the foundation of everything that has been done since, on our flood control project here in California. And he--there were some changes he recommended--but the big thing was that the federal government would assume a third of the cost. Then he went on to say that while the federal government should assume a third of the cost, they should keep very distinct the work that had to be done by the federal government so a s not to become involved in the financial problems of the Reclamation Board which were very heavy at that time. That has since been changed to a great degree.

Then we went back to Washington. In fact, we

were there several times. We had to get the approval of the Flood Control Committee of Congress.

Baum: Who went back?

Downey: There were several of us, the chairman of the Reclamation Board, Al Spencer; Mr. Bernard A. Etcheverry, my dear friend, went back with us.

Baum: He wasn't on the board?

Downey: No. He had been engaged in the levying of these assessments. Colonel Barton, the manager of the board, and several others. We made a number of trips, I don't remember just how many. We were entertained very graciously by Mrs. Frederick Dent Grant, the mother of Major Grant, and I think as charming a woman as I've ever met.

We finally got the matter heard before the Flood Control Committee of Congress and Charley Curry, our Congressman at that time, vouched for the bill. General Taylor, who was then the Chief of Engineers in Washington, testified very strongly against this legislation. That's almost disastrous as a rule because they follow the recommendations of the Chief

pretty largely. And Grant testified in favor of the report. That was a most unusual thing. Nobody, I think, could have done it and got by with it except Major Grant. He had a high reputation. The Board of Engineers of Rivers and Harbors had rather been against us too and that's almost fatal too, in these matters. They passed on all these projects. They rendered an opinion at first very much adverse to us. Then we went back there again and got them to hear us again and they still weren't for us, but they said something like this; it never had been the policy of the federal government to appropriate money for flood control and that if that was the intent of Congress, Congress should express that intent. In other words, they passed the buck back to Congress, which was better for us than turning us down as they first did.

Baum: It seems strange to me that the Engineers wouldn't be glad to expand their operations into the area of flood control.

Downey: Maybe they were, but they didn't want to make a

recommendation for an appropriation which was really in a sense for flood control. They knew that once flood control was opened up as an obligation of the federal government all these rivers in the country would want flood control. And that helped us also when we came to Congress because there were a great many people there who wanted to get appropriations for some river in their own state. There was a lot of opposition to it too. But you can see it was really a question of national policy there and the Board of Engineers of Rivers and Harbors said, "We'd better leave that to Congress."

Baum: When you made your request did you openly say this was for flood control or did you pretend it was for navigation?

Downey: Well, we talked about hydraulic mining and said it was all due to hydraulic mining. As a matter of fact flood control and navigation tied in.

Baum: The federal government had recognized its responsibility for hydraulic mining.

Downey: They hadn't stopped it until later. Yes, the state

courts let ut go on too,but the federal government just hadn't stopped it. That was the big thing. I talked hydraulic mining until I was blue in the face sometimes.

Baum: That was the crux of your argument?

Downey: Well, I would say that, and the fact that the landowners couldn't bear the costs of the assessments.

I might say that we first went to the state legislature again and we said, "We want you to approve now this new Grant Report in which we affirmed just what you did in 1911." The legislation of 1911 wasn't anything near as strong as what we put to them in 1925. We said, "Now, it's a very simple matter here. You just agree to put up your one-third of the cost and the federal government will put up its third of the cost. If we can convince Coolidge and all the congressmen from all over the United States that this is a good thing, you ought to approve it." And that was a hot fight too.

We had sessions. The legislature met in a committee of the whole, both the Senate and the House,

and we had a full opportunity to present our case and we got that legislation through. It was contingent on the federal government's acceptance though.

Baum: Was the southern part of the state against it?

Downey: No, a s I remember there were very few dissenting votes in the legislature. We had a number of matters there that we had to work with the southern part of the state in connection with it. It wasn't near as hard in the state as it was in the federal government.

Baum: Did getting the state to approve this require that you sort of trade votes for other projects in other parts of the state?

Downey: We didn't on that particular matter, but there had been. There had been an appropriation made for three million dollars before this to assist in the financing of Assessment Number 6 and we then also voted for three million dollars for the southern part of the state. There's the usual amount of trading, but I don't remember any trade in connection with this matter, although there may have been in

their minds that maybe they'd want something sometime.

Anyway, lots of people voted for it. I suppose they said, "Well, the federal government will never approve this." That was in 1925.

The big fight came in Congress. We finally got that through in 1928 and that also was a bill for the Mississippi and the Sacramento together. The way it reads is that Congress approves the Grant Report and such changes and recommendations as may be made. I don't think many members of Congress fully realized what they were getting into. They should have. There was no concealment at all. And Coolidge, of all men, approved it.

Baum: Had he given you any support before that?

Downey: No. He knew about the measure. Of course, Coolidge was not a man to approve anything like the expenditures that have been made in recent years. It was long before the days when you could go back to Washington and get money. I think ours was first big measure

of that kind as far as I know. And we didn't get an appropriation or anything very substantial at first.

Baum: But the federal government had agreed to one-third?

Downey: They had. There have been many, many changes since this was approved, generally in the way of getting more money or showing that the estimates were low. I don't know how much money has been poured into that project since that time but it's tremendous. The state then would always match the federal government. Whether the landowners are bearing a full third of the cost now I don't know. But they've put in plenty of money and this saved their lives.

Refinancing the Assessments

Well, after we got this legislation what were we going to do with this money the federal government was going to give us? They were obligated to pay one half the cost of future levees which meant appropriations from time to time, and that was all right. They were also to return, and this was in some respects the most amazing thing about this legislation, to the

state the money which the state had contributed for opening the mouth of the river and the construction of weirs, which was a very substantial amount of money. The federal government had appropriated originally $5,600,000 for that and the state had matched that appropriation. That had to be returned to the state in the process of evening up these various costs.

Then we had to determine what to do with that. I don't know of any case like that...You've heard about the jackel in Kipling, something like "September was the jackel born, a storm came in October. Such a storm as this, he said, I never can remember." (laughter)

But to return money to the state, really for the purpose of refunding that money to the landowners was certainly unusual. Then we had to try to work out so as to refinance these assessments and that was a headache, purely technical. Not very interesting, but it had to be done.

Baum: In other words, you had to get this money from the

state applied to the assessments that were due from the landowners?

Downey: Yes, and in the meantime some of the landowners had paid their assessments. You couldn't very well refund them the money that way, not all of them anyway.

Baum: Had many landowners lost their lands by this time because of assessments?

Downey: Not while I was attorney for the Reclamation Board.

Baum: You never foreclosed?

Downey: No, I didn't.

Baum: Were most of them in arrears? Delinquent?

Downey: Well, the assessments hadn't gone quite that far. For example, in the Number 6 assessment, that had been very bitterly contested. They had to set up a special court of three judges to hear those assessment objections. The feeling was so intense at that time. That required a lot of trial work in the Superior Court and then on appeal and then appeal to the Supreme Court. So the assessments hadn't actually gotten to the point where you could have foreclosed.

Baum: Were individual assessments being contested, or the

whole right to assess the lands?

Downey: Generally speaking the landowners joined together and employed attorneys who represented most of the people who had any point to put up in the assessment. I had to defend the assessments, not a very nice thing to do.

Baum: What was the objection? I know people don't like to pay assessments, but you can't use that in a court case.

Downey: This applies on only one assessment, but the state had built the West Levee of the Sutter By-pass which brought the water in that area down into the Sutter By-pass. When that was built originally by Reclamation District 1500 it was bitterly contested by the people on the other side of the by-pass. That's the famous case of Grey against Reclamation District 1500, which held that 1500 could build its own levee even though the effect was to throw the water over onto the east side of the by-pass. Then when the State Reclamation Board came into the picture it took over the West Levee of the Sutter By-pass and so the people

on the east side maintained that they were entitled to have a levee built on their side,which was ultimately done, at the expense of the Board of Reclamation. They had a lot of points there. Then the people on the west side said they were being overassessed because the east side had a levee built without contribution from the people on the east side. There were hundreds of questions like that. There were individual cases too.

By the time the Supreme Court got to it, they upheld the assessments, and then they began filing new suits to enjoin the collection. I rather favored them as long as I could. I had to fight the litigation and I did, but I knew that the United States and the State of California should take more of their share of the apportionment.

Baum: Then you were in charge of fighting these suits for the Reclamation Board to collect the assessments which you felt were unfair?

Downey: Etcheverry was my main witness on that. We went along together. Yes, the assessments were all approved in

the end, but not paid except a small amount.

Baum: That must have been rather unpleasant for you.

Downey: Well, it was unpleasant because my sympathy was with them, but I kept maintaining that the thing to do was to get this law changed so that the federal government and the state would contribute their share of the costs and we did that too.

Baum: What other kinds of work did you do for the Reclamation Board?

Downey: Then we had to refinance all the assessments. A few of the people who had paid had paid in warrants. They had bought their warrants at a very substantial discount, fifty cents on the dollar. So it only cost them say fifty cents on the dollar to liquidate their assessment. That was quite a problem. In the end, where we refunded money that had been paid on the assessment, we only refunded what they had paid for their warrants.

Baum: Wasn't it rather difficult to determine at what discount they had purchased their warrants?

Downey: We made them show it. They had to make an affidavit.

But I can say this about the litigation. I was almost constantly engaged for a number of years there in litigation in the State Supreme Court or the United States Supreme Court and frequently in the Superior Court. For a time my practice was almost entirely confined to the State Supreme Court. So many problems arose.

Take this three million dollars appropriated by the state in aid of the Number 6 project. The state said it had to be applied in a certain way and we wanted toget legislation through to apply it some other way. So we had to fight the legislature to get that and we ran into tremendous opposition. We got that through the legislature and then we had to face all the litigation on that.

Baum: How did you go about getting something through the legislature?

Downey: We had a very good man, a farmer. There was no better man than he was in work of that kind. I don't want you to think I was doing all this. I certainly was not. We had men who knew how to lobby,

as they say, a bill through the legislature or through Congress, good men, not professional lobbyists.

Baum: Who was this farmer?

Downey: His name was Bill Dwyer. He's also dead now. No better man ever lived.

Baum: He was an employee of the board?

Downey: No, he was just doing this because he felt much the same way about it as I did. He was a very outstanding man. There were lots and lots of people like that. I can't remember all of them.

Baum: Just interested people or people you employed:

Downey: I think they were all people who were interested in the sense that they were interested in the valley lands. Some of the people were hoping they wouldn't have to pay the assessment, of course. It was all fair enough.

Baum: When the Sacramento and San Joaquin Drainage District was passed in 1913, did that act include the one-third, one-third, one-third arrangement?

Downey: No, it just created the drainage district. The

1911 legislation approved the third, third & third.

Baum: But it didn't say specifically that the state was going to pay its part of that?

Downey: We didn't get that until 1925. As I remember, in 1911 it was just simply that the plan of the California Debris Commission was approved, which was at least a moral committment to pay a third of the cost. The 1925 legislation approving the Grant Report is very clear.

Baum: That's where the state finally admitted an obligation to pay.

Downey: Yes.

Baum: I talked to Senator Herbert C. Jones.

Downey: He was in the legislature at the time. What did he have to say?

Baum: He felt that the landowners had no right to expect the state to contribute to this, that they had agreed to build these things which were to their own advantage, and that later on the state was rather taken for a ride.

Downey: I can see that that might be a viewpoint. I think he supported the bill.

Baum: Yes, he did.

Downey: I suppose that other people felt that way. I never felt that way about it.

Baum: Did you feel that the state had really implied an obligation back in 1913?

Downey: 1911 when they approved the plan.

Baum: Then it wasn't just a matter that the landowners couldn't pay, that they were financially unable to carry the burden?

Downey: I felt that it was a fair division of the costs of this gigantic project. The project benefits the state, the federal government, and the property owner and a rough division is a third, a third, and a third. The state certainly assumes some obligation for floods and the United States assumes obligations for floods and for navigability. I can see how somebody else might look at it differently, but of course, I know I'm right. (laughter)

Baum: Was the refinancing mainly carried on by the federal government returning money to the state and then the state picking up the warrants and assessments?

Downey: The state would then repay the landowner who had paid his assessment, but they hadn't paid to a great extent. The Number 6 assessment, for example, was divided into flood control and reclamation benefits and they had made calls on the flood control benefits. Those, we regarded as the obligation of the state and the United States to take care of.

I don't think there are many assessments left. There haven't been many paid because by the process of refinancing we've taken care of them. The state gave us money to refinance too after the 1925 legislation. I know the Number 2 assessment was wiped out entirely and certainly most of the Number 6.

Now the federal government pays the cost of all future levees, the entire cost, and the

Reclamation Board provides the rights of way and takes care of the utility changes.

Baum: This is from the landowners?

Downey: Nothing from the landowners, unless at some time they may be required by the Reclamation Board to put up the money for rights of way. Generally the board provides the rights of way.

Baum: Through state appropriations?

Downey: Yes. The whole thing is rather intricate. The

Bau Reclamation Board started in by having the reclamation districts build these levees. Reclamation District 1500 built this West Levee. Then they immediately put in a claim to the Reclamation Board. That levee cost them several million dollars. The Reclamation Board allowed that. That was before I went on the board. Then I had to contest that in the Supreme Court because I claimed they shouldn't do that. It was very complicated.

Baum: Before 1923 when you came on was most of the construction done by local districts?

Downey: Not all of it, but most of the big construction.

Baum: Then they would sendi in a claim to the Reclamation Board, and you felt that was not a legal way?

Downey: I just didn't want to pay out the money at that time. Because it would come right back on the property owners anyway and I objected to the allowance or interest.

Baum: Then the Reclamation Board would have to assess the same property owners.

Downey: That's right.

Duties of the Board of Reclamation

Baum: In 1923 when you came on the board there was a complete reshuffle of the board by Governor Richardson.

Downey: There sure was.

Baum: Why was that?

Downey: Part of it, I think, was the feeling that generally prevailed against the Reclamation Board. Part of it was politics.

Baum: What was the feeling against the Reclamation Board?

Downey: In 1923? One of the things I think was the fact that people didn't want to have such money spent on the project. I don't know how I got on the board staff at that time. The whole board was changed. Richardson did a good deal of that when he went in, made a lot of changes. I'm sure there was a general feeling against the Reclamation Board. There was a general feeling too when we all went in because the old board had their friends and it was a very unceremonious way of getting rid of the board. He just fired them.

Baum: Yes, he fired thirty members of the staff and closed the San Francisco office.

Downey; And they had their friends, too. The feeling was that he shouldn't have done it that way. They fired the attorney too, which wasn't very pleasant for me because I was a close friend of his.

Baum: Oh, that was Frank Freeman.

Downey: Yes. A very fine gentleman.

Baum: You were a Democrat at the time and Richardson was a Republican. I wondered where you came in?

Downey: I don't know?

Baum: Were you a political supporter of his?

Downey: No, not of Richardson. I was lukewarm about him. I don't know.

Baum: Were you an active Democrat at that time?

Downey: Not particularly.

Baum: You weren't very political?

Downey: Off and on through the years I have been. I wasn't at that time. I guess I told you that when Hiram Johnson and Theodore Roosevelt ran in 1912 I was quite active as a Progressive, then shifted to a Democrat and am still a Democrat.

Baum: Could you tell me a little bit about what the duties of the board were? How often did they meet?

Downey: They met once a month, and we had special meetings. They meet twice a month now.

Baum: Did the board members have to spend much time on their work outside of the meetings?

Downey: Well, Peter Gadd did. He had energy. We realized later on he had his ideas as to where his energy should be put. Certainly the chairman of the board put in quite a little time. No, I don't

think they put in too much time ordinarily. Most of the work was done by the staff. I thought I worked pretty hard at that time.

Baum: In the 1920's the Central Valley Water and Power Act came up for the initiative vote three times. I wondered if the Reclamation Board took any stand on that.

Downey: No. They certainly didn't take any action on that when I was with the Board.

Baum: About how much of your practice was devoted to the Reclamation Board?

Downey: Well, there was certainly a period there when we had all this litigation, when I was working on Congress, on Grant, that it took pretty near all my time. That was almost the bulk of my work for the entire time I was there, heavy work.

Baum: Were you paid on a salary basis or a fee basis?

Downey: No, I sent my bill.

Baum: Did you feel that was more satisfactory to be on a fee basis?

Downey: Doing that kind of work, it was. It was all very

big work. It involved very substantial sums of money and I wouldn't have wanted to be paid just by the month. That three million dollar appropriation the state made was a continuing appropriation and of course, we were always worried about whether they would continue or cut down. There certainly were fights against it.

Baum: Was that part of your job, to see that the appropriation got through?

Downey: It certainly was. All of the financial provisions were so important to the board. I certainly followed that. Except for the engineering, I knew pretty well what was going on while I was there, and I've kept in touch with them ever since fairly well. I know Colonel Barton, the chief engineer. He was there all the time. He came in at the same time that Richardson fired the old board, and he'd come to me and I to him to get information.

Actually, when the bill was up before the legislature to transfer all my activities to the

attorney-general, I recommended it should be handled by the attorney-general and since that time it has been handled that way.

Baum: Was that when you went out? About 1933?

Downey: Yes, that's when I went out. I know, the man in the legislature who had perhaps the most to do with that wanted to know if I wanted to go out. By that time I was pretty well fed up on it. Heavy work.

Baum: By this time was most of you practice devoted to water law?

Downey: It's my recollection that I went down to Merced before I left the Reclamation Board. I was w still busy with my Reclamation Board work, but I think I was gradually getting to the more general water work.

Baum: Do you handle any work for them now?

Downey: No. It all has to go to the attorney-general, but I do handle work for them in a private capacity, and Barton comes to me, and the chairman of the board. They've recently had claim-suits

filed against them for several million dollars rising out of the recent flood so you have to help them out if you can. They come to me and talk to me about those things.

Baum: What were some of your major cases while you were with the Board.

Downey: I've made a list of them. (The list is included in the Appendix)

Baum: Just as a summing up, do you feel that the major impediment to this coordinated flood control construction was financial?

Downey: I'm sure it was...I think the only thing that held it up before was lack of money. We need more money from the state and the federal government. That's the thing I'm working on now, and the attorneys for the board.

We need all our banks stabilized. All the banks are more or less crumbling, caving, and it's a tremendous job to stabilize them. They have to be reveted. It runs into fantastic sums. I've always maintained it's the obligation of the

federal government because it's the navigation end of the project. Barges use the river for navigation, we empty water into the river from Central Valley, Shasta. It all causes erosion of the banks. Unless the banks are completely stabilized they break down. They've never been completely stabilized and that's what we're trying to get the federal government to do now as part of our flood control project. They do assume some of this bank revetment on the Mississippi but they are very much afraid of assuming anything further on the bank revetment because of the tremendous cost all over the United States.

I know that in this Reclamation Board work I did a good job. I know that. But it's long past and gone now, water over the dam.

Baum: Was the Reclamation Board able to do any work before 1917?

Downey: The Reclamation Board was charged to carry out this plan that had been approved. So they began to adopt assessments that were necessary to carry

out a certain part of the plan. For example, they levied an assessment over here in Sutter County and vicinity, the Sutter-Butte By-Pass Assessment Number 6, an eight million dollar assessment. It doesn't sound like much now, but it was an awfully big assessment in those days. They were proceeding to carry out that assessment. There were other assessments in other areas. They levied a general assessment to take care of the overhead.

Baum: In other words, they levied an assessment for work in a certain area just on that area rather than a general assessment over the whole district.

Downey: Right. Now, we get to the point where I came on the board in 1923, The Sacramento Valley was in a frenzy. They had all of these assessments, some of which had been levied and some of which they were planning to levy and the lands couldn't a stand it. We were very much undeveloped at that time.

What to do? Obviously, the fundamental defect was that the state and the federal government

weren't bearing their portion of the cost. The plan was all right.

Baum: Was the state bearing one-third?

Downey: They made some minor appropriations, but nothing like one-third of the cost. They made one appropriation for three million dollars and there were others. Those just took care of little things, but it was very complicated because we had to credit those some way on these assessments.

Baum: Why didn't the state bear its one-third?

Downey: That's what we said. But, of course, they weren't going to put up any money until the federal government put up their third.

Baum: It was in March or April of 1923 that this big shuffle came along and Peter Gadd was appointed as the secretary. Shortly after that there was an investigation as to whether he was using his influence improperly.

Downey: That was very embarrassing. He was also my friend. He was the secretary of the Reclamation Board and he was easily the most influential member on the board. They all trusted him. He was undoubtedly

a good friend of theirs. After they began allowing these claims, Peter went to the attorney of Reclamation District 1001 or the attorney went to him, and Peter told the attorney that he had a good claim against the Reclamation Board, similar to the claim Reclamation District 1500 had had. Then he made a contract with District 1001 that he be paid a high percentage of whatever might be recovered on that claim from the Reclamation Board. He and the lawyer agreed on that.

Baum: Charles Metteer.

Downey: The engineer got the biggest part of the fee instead of the lawyer. That was a horrible thing. But I don't want to joke about this deal. These warrants, after they are approved by the Reclamation Board--he puts in a claim for the 1001 levee and the warrants go to the State Controller and are then returned to the Reclamation Board. Ordinarily it takes quite a while to get those claims back, but he had the claims approved and then he went around after the meeting of the board and had them all signed by the individual members of the board--it was necessary to get them

signed--and then he gets those warrants back almost immediately and then he keeps his share of the warrants and turns back a very unsubstantial amount to District 1001.

Well, Peter was my friend too. We've never spoken since that time.

Baum: How did that come out?

Downey: First the Reclamation Board investigated it and held that he shouldn't have done what he did. Then some of the landowners in District 1001 brought suit against him to require the return of these warrants, against him and the attorney, and they won that suit. He never got anything out of it. There were still a few warrants that he might have been entitled to as a reasonable fee. By that time the Board of Control had stopped payment on them and he never got a cent out of them as far as I know. He had actually resigned from the board at the time he got this claim through.

Baum: That happened in November of 1923. I think he had been appointed secretary in March or April of 1923.

Downey: He was a fast worker.

Baum: What were your duties in connection with this case?

Downey: In the first place, he was my friend. I talked to him and told him he ought to turn back those warrants. He didn't see why. He'd done a good job, he said. He wasn't any more involved with the board at that time, he said. Of course, we debated that. I said, "If you don't do it, it will put all the board in a terrible position. People will feel they shouldn't have paid that kind of a bill for collection of a claim if there wasn't something wrong with the claim. You think the claim was good and I think so too. But they'll never forgive the board for approving a claim like that where a man has to pay all that money to get it collected." I remember at our last conversation he said, "I won't give back the warrants." And he never did, but he lost them all.

Baum: So you tried to prevent this scandal.

Downey: Oh yes. Then after that I had to go before the board and recommend that they take action. We had a hearing on that and I think I wrote the opinion

for the board in which they disavowed the warrants and recommended that the landowners in District 1001 make suit to recover them. The board couldn't bring that suit.

Baum: An unfortunate occurrence.

Downey: We had come back from the service together. Our wives knew each other.

Baum: What are the qualifications that a governor looks for in a board member?

Downey: Well, they've had good men, awfully good men. They try to get a certain representation for all the differnet sections of the state that are interested in the work of reclamation. They have now, for example, one man from Stockton, a couple men from down the river here, one man from Yuba City, one from Gridley, one from Sacramento. They divide up the representation so as to get people who are interested in reclamation.

Baum: Are they mainly landowners who are involved?

Downey: Their people mostly are people who are rather substantial landowners. They are unhappy now because

of all these claims that are being filed against them as a result of the flood.

WORK FOR THE MERCED IRRIGATION DISTRICT

Legal Cases

Baum: I think you said you went to Merced about 1927.

Downey: It must have been about 1927.

Baum: What did you do with your practice up here?

Downey: I didn't live down there. I'd get up about four o'clock in the morning and drive down there, be there about seven or eight o'clock and then I'd stay there the day and drive back that night or the next morning. Much of that work was right here in the office, you see. Then, when I'd try a case I'd have to go down there. I didn't have anything to do with the organization of the Merced Irrigation District. The district had been organized, had voted bonds, and the building of the dam had been pretty well completed and the power house. Then everything kind of got into a mess. They brought all this water down to areas in Merced County that hadn't had water before and there was not adequate drainage and that created a high ground water condition and they had lawsuit after lawsuit after lawsuit. Things were

getting a little hot then.

Baum: Was that why you went to Merced, to handle the Merced Irrigation District affairs?

Downey: Yes, it must have been right after the irrigation season of 1927, which was the first irrigation season they had after the dam. I was really called down there.

They had a very able man at Merced, Al Cowell, in charge of the legal end of the district, but he wan't particularly a fighter. Part of this was not his fault and part of it was. When they relocated the Yosemite Valley Railroad that cost a lot of money and he was held responsible for that. He shouldn't have been responsible for that, but the people held him that way. They had all these riparian claims coming up and they were afraid that he wouldn't fight them. So I went down there to succeed him, and I never had a finer friend than Al Cowell. A fine man.

Baum: Did you have a reputation as a fighter by this time?

Downey: I think I had more of a reputation then than I've

ever had since. I loved these fights then. I don't like them now.

Baum: Had you already specialized in water law by this time?

Downey: No, I really hadn't. I'd worked with the Reclamation Board, but there we were trying to get rid of water. Suddenly I was called down to the San Joaquin Valley and right away one of the big problems was getting water to the people who wanted it. They'd had the old Crocker-Huffman Land and Water Company, which had operated as a public utility and sold water, and in the late summer there wasn't any water to speak of. Out of that came the desire to form an irrigation district and impound the water for use in the summertime.

There were so many problems at that time. There was too much water arising from the release of water from the dam without the necessary drainage, practically no drainage at all to speak of. The problem had to be worked out to keep the lands from high ground water conditions and ruination of the fruit lands.

Then there was the problem of handling the water... it was new all the way around. It was like upsetting an ant heap, the ants ran everywhere.

Baum: What were the major causes of these lawsuits?

Downey: A great many people wanted to get water and there wasn't enough water to satisfy everybody. And there were riparian rights suits, which were tremendous. In those days a public agency just went up the river and built their dam and that resulted in adversing the riparian owners down below. They got by with that to a very considerable extent. The Miller and Lux people brought suits on the San Joaquin prior to my connection with the Merced District. They entered into contract with the Southern California Edison Company.

But people were becoming more and more aware of their riparian rights and we had a great many riparian right suits. They brought what we called inverse condemnation. They were trying to recover damages for taking water by the Merced Irrigation District. They had lost their right to an injunction because

they had waited too long.

I remember one case, the Stevinson people, who were large landowners, they had a suit pending against us for several million dollars, which we finally settled by giving them some of our spill water. There were suits brought that would have bankrupted the district, and of course people were becoming worried about that. I had to take over all those cases.

Baum: Did you take most of those cases into court or did you try to settle them outside?

Downey: They all started in court. One case there, the Collier case, a rather celebrated case, went clear through the trial. Most of those cases were very, very vigorously prosecuted and the Collier people said, "We have this beautiful ranch here on the Merced River. The water used to come up every winter and overflow our lands, sweeten the lands, kill the pests, and now you've taken it away from us." That was a forerunner of the constitutional amendment which came in in 1928 and helped those cases very much. But this Collier case resulted before the amendment

was passed. They wanted half a million dollars because they claimed the ranch had been ruined. It was very ably and very vigorously prosecuted. I remember, we argued it about Thanksgiving, just before the Big Game. We managed to see the Big Game, but I didn't know whatwas going to happen in that case, and strange to say, I was thinking not of the game but of the case.

What we offered to do, and this was a novel feature, a rule that would have been applied had it not been for the constitutional amendment which eliminated the necessity for it, we said, "We haven't taken all your water. We'll guarantee to give you eighteen second feet of water forever, whenever you want it..." They said that was like stealing a steer and offering back a piece of the hind quarter. In the end the jury had to apply this rule, that if we had damaged their property we had to pay for it, but the only damage was the difference between what they would have gotten in a state of nature and what we offered to give them, and they got nothing,

not a dollar.

It was quite a case. Edward F. Treadwell, who handled many of those cases, handled the case against us. We didn't know what would happen to us on that case. That could pretty nearly have ruined us right there, that one piece of property.

Baum: They didn't want the water? They wanted the money?

Downey: They wanted the money. They were willing to take eighteen second-feet of water, but they claimed that in a state of nature they got several thousand acre-feet and they didn't want to take less than that. As a matter of fact, it was really a practical application of the constitution amendment, although that hadn't gone into effect at that time. The amendment says that they are only entitled to a reasonable amount of water by reasonable methods of diversion and eighteen second-feet of water would have taken care of their ranch if they'd put in pumps. If they'd put in the pump,that would have cost them fifty thousand dollars, but they didn't try the case on that theory and they didn't get a thing.

Baum: I'd like to ask you about the Herminghaus case and the resulting constitutional amendment. I think that was in 1926.

Downey: Let's see. I was with the Reclamation Board in 1926. The constitutional amendment was in 1928. I was very interested, but I didn't participate then like I do right now, for example, on this counties of origin water that they're going to have a dispute about pretty soon. But I knew about it and talked to Peck and Treadwell about it frequently and those other men who were interested in it. And was very much interested in the constitutional amendment which was the outcome.

Baum: Were a lot of the cases you tried at Merced arising out of this Herminghaus decision?

Downey: Those riparian right cases were.

Baum: You mentioned E. F. Treadwell. Was he in favor of this 1928 amendment?

Downey: I don't think he was. He may have been on the state-wide committee on that, but I'm not sure.

Baum: He was a Miller and Lux attorney.

Downey: He was a Miller and Lux attorney for a great many years. He did an immense volume of water work down in the San Joaquin Valley. Of course, he was the attorney in the Herminghaus case itself. He's written a book, The Cattle King. It isn't as good as it should be or as good as Treadwell could be just to talk with you. But he had a great lot of experience in those kinds of matters.

Baum: And you and he were in many cases on opposite sides?

Downey: Always on opposite sides. I don't think I was ever on the same side.

Baum: What did Treadwell look like?

Downey: He was a tall man, rather sparsely built, a strong face, and a lot of experience in water law.

Baum: Was he a man you could negotiate with, or did you have to fight it out?

Downey: Not at first you couldn't, but as the years went by and he began to get a little older, yes. He represented Collier in that Collier case and according to him we did make a proposition of settlement--I know we did--and according to him his people wouldn't

take it. He recommended it, maybe. I don't know. He would have been much better to have taken an compromise.

But after that Collier case, which was the most bitter fight we had there, I think we should have been held for some damages, but we weren't held for any. After the case was all over, one of the jurors, a big six foot six man, met me on the street and shook me by the hand and said, "By God, this irrigation district's got a lawyer." (laughter) That was a gross overstatement and not deserved, but the feeling of the people was that they were letting the irrigation district be cornered by all kinds of devices and money taken out of them. I was suppossed to get them away from that and we had tremendous luck in all these cases. Incidentally, the same Collier juror, when asked how the jury came to find against the plaintiff, said," By God, No! It ain't right." A Solomon judgment, I thought.

Baum: Why do you think most of these cases were won by the district? Was that because the jurors were prejudiced in favor of the district?

Downey: Well, I think we had the public sentiment although irrigation district residents were not eligible for the jury. It was a matter, however, of presenting them the facts.

The San Joaquin Light and Power Company arranged right at the inception to buy the power from the district. That was in order to prevent paralleling, as they had done in Modesto. Pretty soon we got into a fight with them as to whether they were taking as much power as we could generate at that time. They said, "Well, we don't have to take above 25,000 kilowatts," I brought suit on that myself against the San Joaquin Light and Power and we recovered there. That made a difference of about two million dollars to the district.

Baum: They didn't want all your power?

Downey: No, they had originally taken the power because they didn't want to have the district parallel their system. Then we began to get peak loads and they could get that very cheap from us, unless they were obligated to buy it. The contract provided that we

would build a plant of 25,000 kilowatts capacity, and then they'd get the dump power much cheaper. We sued them though for all of it and we got it, up to 32,750 kilowatts as I remember.

Baum: Were most of these in jury trials?

Downey: No, they weren't. That one was a jury trial. There were a great many court trials involving not so much money as those two cases.

Baum: Was there any agitation among the district people to take over the distribution system?

Downey: I think there probably was, Mrs. Baum, but that part of the fight was over when I got there. From time to time people used to say to me, "We ought to set aside that contract and build our own system." I learned about that sort of thing when I came to S.M.U.D.

The Lyman Hoag case was a court case because it was an equity case. That was a case to compel the district to put in a lot of drainage. Again, you can't do all those things in a day. It costs a lot of money. We found by experience that the best way of

handling that drainage situation was the drainage wells.

Every one of these cases, Mrs. Baum, were tough cases. I couldn't try those cases any more. They were war.

In that case the district had employed Jim Peck who was an outstanding water lawyer. That was before my connection with the district. The district was being sued and it would be calamity if the suit was successful. It was a case involving months and months of steady work, the technique of it. They just got well into the trial of the case, maybe two or three days before the end, and Peck turned around and sued the district personally for the same cause of action. Well, he hadn't any alibi for that. Of course, the community was infuriated.

I didn't know anything about the case. I hadn't handled it at all, didn't know about the facts or underlying principles of it, but the directors just called him up and fired him like that. Then they

called me up in Sacramento and told me to come right down and take over the case, which I did. It was a tough case. That went to the Supreme Court too. We won.

I think for several years of my life when I was representing the Reclamation Board and the Merced Irrigation District my practice was practically confined to cases that went to the Supreme Court.

Baum: All this legal work was quite expensive. I was wondering if the voters in the district resented this expenditure of funds.

Downey: Well, I didn't charge as much then as I do now. (laughter) I'm sure I did that work very reasonably and that's another reason they kind of liked it. I could have charged more and would now if they called on me to do it.

Baum: Were you popular with the district voters?

Downey: I think I was.

Baum: I know sometimes attorneys aren't popular.

Downey: I think I was. But how does any man know?

Refinancing the District

Downey: That leads up to another thing. We ran into the agricultural depression and we ran into these short power years, a year when we'd get $95,000 from our plant which should yield over $500,000 a year. Those things combined, and the fact that the whole set-up of an irrigation district was wrong for the period of time we had then. People couldn't pay their assessments and when one person couldn't pay that went onto the rest of the land and pyramided. It just couldn't be worked out. So we realized soon that we were going to go into default. We couldn't possibly meet our obligations. I didn't feel competent to work that out.

They got a very outstanding lawyer to handle their negotiations on refinancing. He was a very good lawyer, he understood that business. But there again, after he got into it, he had no conception of the difficulties of the farmers down there. They were rapidly going to disaster.

Baum: Who was that?

Downey: Max Thelen. A very good friend of mine, by the way. But he didn't understand the farming point of view on a thing like that.

Well, I worked with him. He was very gracious to me. He didn't want to handle the law end of it at all. They finally drew up a plan to refinance the district which contemplated some reduction in the interest, but ultimate payment of all the principle. But it was just one of those things that couldn't be solved without a complete change that nobody at that time would consider.

Baum: Did Thelen think this was feasible?

Downey: I think everybody did. The bondholders all thought it was feasible. There was a big bondholders' committee at that time. They realized the district was in trouble, but they thought it could be refinanced.

Well, everybody thought this could be carried out without any reduction in the principle at that time. Max did very excellent work on that,

but it was just one of those things that was impossible to do. Eventually they wanted to have me take that over, which I didn't feel competent to do. That came at a time when conditions had changed, the depression was on, Roosevelt had gone in as president, the National Bankruptcy Law had been passed by Congress, held unconstitutional by the United States Supreme Court and then later re-enacted and held constitutional. The Reconstruction Finance Corporation had been authorized to make loans to some of these districts that were very distressed.

Baum: Wasn't it back in 1933 when these refinancing negotiations began?

Downey: Yes.

Baum: I noted that Max Thelen and Franklin P. Nutting were engaged in negotiations.

Downey: Nutting's name doesn't ring a bell. But Max dropped out before we got to this refinancing end of it.

Baum: Oh, he dropped out? Then you had the Benedict

report made up.

Downey: Yes, and that's quite a milestone. By the Giannini Foundation.

Baum: What was the purpose of the Benedict report?

Downey: I think that was started when Max was still there and he undoubtedly helped in arranging that. The trouble was that nobody could tell what was the ability of the landowners to pay. Finally Dr. Benedict agreed to make this report. I don't think that was finished until long after Max was not there. That report is a scientific report, very ably done. Dr. Benedict testified for me in the case which finally resulted in approval of the refinancing plan. I think without his testimony I couldn't have won that case. That was in the U.S. Court and subsequently went to the United States Circuit Court of Appeals and Supreme Court. We had to show that the amount that was compromised in this settlement was the amount equivalent to the ability of the landowners to pay. The only way you could prove it, I

believed and still believe, was by testimony of this kind.

Baum: Then the problem was that the bondholders didn't believe that the farmers were as poor as they were?

Downey: That's true. Then gradually began to see our problem, I think. Finally we got to the point where there was a big group of holdouts on the bondholders' committee that wouldn't acquiesce in this plan. We had to get their consent in order to file a petition in bankruptcy under the Municipal Bankruptcy Act. So we decided to hold a referendum among the bondholders themselves. Do you remember how many were on that committee?

Baum: It was a huge committee.

Downey: And men of means. So we held this referendum. The big thing I did, if I did anything there, was in getting them to submit it to a referendum of their own people. We sent out ballots to determine if they were infavor of this plan or not. We waged a political campaign at that time the likes of which you've never seen. We had to bring

arguments to bear on the bondholders and the committee to make them feel that they should accept this 4% bond in place of what they already had, and there was a cut of about eight million dollars in the principle as I remember.

In the end to our amazement we got the bondholders' committee to vote in favor of this plan. There were still about eight or ten holdouts that never did come in.

Baum: What kind of persuasion did you use?

Downey: I don't know. It must have been pretty good. We knew we were right and could show even the bondholders. We're still fighting with some of those people right now. I just closed up one case.

Baum: Some of the holdouts?

Downey: Yes. They wouldn't even take their money when it went into court. When we got this decree of court under which they had to accept these bonds, they wouldn't take the money and we had to get an order of the court compelling them to take the money.

Baum: Did you send them copies of the Benedict report?

Downey: Oh yes.

Baum: And use printed material in your campaign, or did you contact them personally?

Downey: Well, it was both ways. The committee was represented by George Herrington, an outstanding lawyer of San Francisco. He thoroughly understood the situation. As a matter of fact, we retained him to assist in the trial of the action when it finally came up. This we could do after the referendum. He was representing the bondholders' committee, but we retained him to be there because he was so very, very good. As he said, he'd been in every refinancing plan in California involving irrigation districts and he knew just what he was talking about. I have a talk here that he delivered at the time of the argument which I consider very fine which I'll give to you. It explains the picture very clearly.

Baum: Was he chiefly a bondholders' representative in all these California cases?

Downey: Yes, he was a bondholders' representative, but

he was a very constructive man. Anyway, by that time we had much litigation. There were suits in state courts to compel us to pay the bonds, matters pending before the legislature wherein we tried to change the law. Of course, the Municipal Bankruptcy Act had only recently been upheld. Hell was poppin' all the way around.

In the end we prevailed. I think that's true of every case I had there. I don't claim credit for them.

But I must say this, my relations with Max were always very,very pleasant. I've always had the highest regard for him.

Baum: I read a speech by Dr. Benedict, this was before the negotiations were completed, and I think he said there had been too many negotiators and that was one of the troubles. This was before Mr. Thelen was out of it.

Downey: There were lots of people trying to negotiate.

Baum: I think they shuffled it down to just Mr. Thelen and got rid of the other negotiators.

Downey: That's true. And Max' appointment as negotiator met with great approval at that time. It wasn't his fault the plan failed, it just wasn't in the cards to carry out that plan.

Baum: That was in 1933. I don't think any districts had cut their principle then, as they did later.

Downey: No, the bondholders weren't used to that at that time. Of course, after that came the terrible depression and everything kept going down and down. The one thing that saved us was the fact that they had made money available for loans by the Reconstruction Finance Corporation and we got one of the first loans there under that law.

Mr. H.P. Sargent, the secretary, and I went back to Washington. Kind of a laughable thing, two boys from the country. He was a Maine boy, very much of a country boy, a splendid man. We went there and we just went up to the office of the Reconstruction Finance Corporation and told them we wanted a loan of several million dollars. They were expecting us to come there and contact the congressmen and contact the senators and

work on them, so to speak. We didn't know, we just went there. They laughed about that afterwards but we got the loan. I thinkwe got one of the first substantial loans to distressed irrigation districts and one of the biggest ones.

Then, you see, we had to work out this bond act cutting down the principle. Then we had to arrange with the bondholders' committee to accept it. Under the Municipal Bankruptcy Act you have to get a certain percentage of your creditors to accept. Then we filed the action and we had to prove our case, which to a very substantial degree was proved by the Benedict report.

Baum: I'd like to ask. Was one of the holdouts J. Rupert Mason?

Downey: On yes. One of the holdouts of the holdouts.

Baum: It seems like whenever there's a holdout in an irrigation district, he's it.

Downey: Oh, he did. Quite a group of the irrigation districts refinanced at the same time and he was in all of them. He kept me filled up with

literature. He asked me about sending literature to the bondholders. He always sent me a Christmas card. He had the point of view of the bondholder. At the same time, he must have realized that people couldn't pay those obligations. Some of those bondholders just figured they'd hold on long enough and they'd get their money. In some of these districts they did. They didn't get one penny in Merced, except what everybody got. They figured by and by they'd pay them off just to get rid of them.

In some of these irrigation districts the fortunes were varied. In some cases they didn't get the settlement proposed, in some cases they were reversed, but on the whole they worked out pretty well.

WORK FOR THE MADERA IRRIGATION DISTRICT

Miller and Lux vs. Madera Irrigation District, 1933

Baum: Then when did you go to Madera?

Downey: Well, I didn't go to Madera like I did to Merced.

Baum: You were in Merced for a long time.

Downey: Yes. I can't tell you when I left Merced. I must have been there about ten years or so, quite a block out of my life.

Treadwell brought a suit against the Madera Irrigation District to determine the water rights on the San Joaquin River, of which most all were held by Miller and Lux and the public utility which they owned. It involved practically all the water in the San Joaquin River. It was tried for months.

I was with Milton Farmer at that time representing the Madera Irrigation District. That decision was kind of a classic in water law, the decision by Judge Haines. It didn't go to the upper courts.

Baum: This Miller and Lux vs. the Madera Irrigation District was 1933. Did you think the judgment Judge Haines rendered was a fair one?

Downey: Yes, very able. It was about that thick.

Baum: Were all of the parties satisfied?

Downey: Nobody appealed. Yes, I thought it was very fair. We came out of it very well, Madera District. He certainly cut down on some of the rights of the Miller and Lux people. Treadwell wasn't happy about that, but he had a very logical mind and I think he accepted it...they figured they couldn't reverse it anyway. We didn't want to go up any higher.

Baum: How did Judge Haines come to his decision?

Downey: Well, he's a bachelor and a great worker. I can only say that was the only case I ever tried before him. He'd get the daily transcript. The transcript would be out by seven o'clock. He'd take it up to his rooms and read that transcript all the rest of the night. It was a long case, very dreary engineering. Then he'd come down to the court in the morning and he'd say, "Gentlemen, have you any corrections to make in the transcript of yesterday?" Most of us hadn't

even read it. We'd say, "Why no, Your Honor." "Well, the court makes the following corrections." Then he'd read off a long list of corrections he'd made in that transcript. He was a terrific worker.

Baum: Then he had digested all this engineering material himself?

Downey: Yes, he had. As Treadwell said, and coming from Treadwell, that's a good deal, at the conclusion of the evidence he said, "Your Honor knows much more about this case than any of us lawyers here." And that was true, he did. Then he took the case under advisement and by and by, it wasn't too long either, most people would have taken several years to decide that case, he sent word that he was going to decide the case and he wanted all the attorneys to be in court. So we all came to court and he made us sit there while he read his decision. A big volume. I think it took him two days to read it. I talked to Chief Justice Gibson about him being on the Supreme Court, he ought to be. I never knew a man to understand a case better than he did. But

apparently he had some idiosyncrasies that people didn't like, I don't know. Hard to work with maybe. I never thought that. He was very agreeable. He always knew what the case was about. He was ahead of you all the time, which was very unusual in a judge.

He's a judge in San Diego. He was called in to try this case. I've often wondered if he is still living. He was pretty well along in years at that time. I haven't ever seen him since that case.

Baum: Have you ever been involved in any other cases that concerned adjudication of water rights? Where the judge made the decision like that?

Downey: I've never known any judge who could pass on all the engineering matters that he did. There probably have been. I don't recollect.

Negotiations to Sell Friant Dam Site to the United States

Yes, but my contacts with Madera were not as close as they were at Merced. I worked for them for a period of years and finally gave it up for many reasons.

At that time the Madera people had the Friant site, which has subsequently gone to the United States, and they had filed notice of appropriations. The theory was originally that they were going to carry out this project themselves, what is now the Friant feature of the Central Valley Project. They couldn't do it, of course, the expense was too great. Then the state came in and was going to take over Friant. The state at that time intended to put through the Central Valley Project. That's about where I appeared in the picture.

The state negotiated with us, Madera, for the purchase of Friant dam site, that's a wonderful dam site, and the appropriations there. Then the United States took it over and we negotiated with the United States for some time about the sale of the Friant dam site and these water properties. In the end the United States bought--I've forgotten what the consideration was--and they also agreed to build the Madera Canal which was going to be used to serve Madera. That was done while I was still there.

Baum: And you carried on those negotiations?

Downey: Yes, with the State and the United States I did. Where we finally got into trouble, and that's still in litigation to this day, is whether the contract the United States finally offered the people of Madera on water was a proper contract...160 acre limitation you know. But I dropped out of it. It took too much time, was a long way off, and many other things were unpleasant about it. That's one of the reasons I got out of it. They had a board of directors that was determined to sign any contract and they had some other people who wanted to negotiate further. It was very, very unpleasant in the end and I finally got out. Right now the case is in the State Supreme Court as to whether they can force this 160 acre limitation on them. I don't know what's going to happen in that case.

Baum: Were you in favor of negotiating further?

Downey: Well, it reached a point down there where the members of the board wanted action, they wanted water, and they were determined they were going to get it no

matter what they had to sign. I don't say I was opposed to that. They had to make up their own minds. There was a risk negotiating that we might not get anywhere, might kill the whole deal. No, I don't think I had any particular stand on that. It was up to the directors.

The 160-Acre Limitation and the Bureau of Reclamation

This whole 160-acre limitation thing is confusing for so many reasons. I don't know how they're ever going to enforce it; I don't know how they're ever going to repeal it. It's absurd in some respects. Then, Sheridan is wildly opposed. I've tried to keep out of that pretty much.

Baum: You felt that the farmers were against it, most of them?

Downey: Certainly many of them were. The smaller farmers were probably in favor of it. It's one of those fighting issues, you know.

Baum: It was a fighting issue within the district?

Downey: Yes, even then. There were people who had considerably more than 160 acres who were in the district and they

had paid their assessments sometimes for years on the theory that they were going to get water and now they were going to be excluded from the district if they couldn't get water. Well, you can see all the problems there.

Baum: But you didn't take any stand?

Downey: I didn't down there. One reason for that, as far as Sheridan was concerned, our relations were too close. I was very careful about that. And I don't even know now what I'd do about that if I were in Congress.

Baum: Then I take it you didn't agree completely with Sheridan?

Downey: Well, Sheridan was my brother, you know.

Baum: How did he get started on this?

Downey: I don't know. People said, "You got him started on this." That isn't true. I may have expressed an opinion at one time, although I'm not clear about it, that the 160-acre limitation was an absurd thing, but that wouldn't set Sheridan off. He'd make up his own mind on that and he did. He became obsessed by what he believed was injustice as injustice always upset him.

Baum: Did he have close friends who were affected adversely by this thing?

Downey: No, I think just the principle of it went against his grain. Sheridan, of course, was essentially a liberal in all his views. But he placed himself right in opposition to all the people he'd worked with, the old age pension group, the C.I.O, the labor unions. When he got to that he never backed up a bit. He still feels the same way about it. If he came in here right now, he'd be off, intense, perhaps almost irrational. Maybe he's right, I don't know.

Baum: Well, at least he sticks to his principles.

Downey: That he does, through thick and thin. Have you seen his book, They Would Rule the Valley?

Baum: Yes, I have.

I think it was in 1941 that Madera was informed that the acreage limitation applied to their properties and they passed a resolution against it.

Downey: Yes, they opposed it.

Baum: Were you their attorney at that time?

Downey: No, not at that time. I kept out of that very, very deliberately because Sheridan at that time was fighting the 160-acre limitation.

Baum: I know Harry Barnes, executive-secretary of the Madera Irrigation District, has come out in favor--not in favor of the acreage limitation--but of accepting federal operation of the Central Valley Project.

Downey: I haven't been in contact with Harry in recent years. I was very closely in contact with him for many years there. A very, very able man and a very fine man of integrity. They don't make them any finer than Harry Barnes. He's been doing some consulting work outside of Madera. I hear from him at Christmas.

Baum: I wanted to ask you what you thought about the Bureau of Reclamation in California?

Downey: Well, of course Sheridan was biased very much against the Reclamation Bureau under Roosevelt. He thought everybody there was either a Communist or a fellow-traveler, and there were some people who were certainly liberal, to say it mildly. I can't even talk to him about the Reclamation Bureau, he gets

mad. Mad at me for even talking to him about it.

Baum: Sheridan didn't feel the Reclamation Bureau was so bad before, say 1933.

Downey: No, I think his animosity toward the Reclamation Bureau was after he was back in Washington. He really wasn't calm about that, although there was much in what he had to say, I think. Of course Mike Straus, he was Commissioner of Reclamation, he didn't like Mike.

Baum: Personally, or his policies?

Downey: I think he didn't like his policies. Sheridan was one of those men, if he dislikes you he dislikes you on all grounds.

Baum: Well, what did you think of the personnel?

Downey: There certainly were some very able and liberal people, to put it possibly without exaggeration. There were a number of people there I think who were influenced by Communism. At least, to some extent I think their views were affected. I don't think anything like what Sheridan thinks. Of course, they're much more conservative now under Eisenhower. Dickie Boke, who

was the Regional Director here, under Truman and Roosevelt, we didn't know just exactly what to think about him. I liked him personally. The new man, Spencer, is undoubtedly very conservative, a high-grade engineer.

Baum: Did you think Boke's policies were detrimental to the Central Valley Project?

Downey: I wouldn't want to say that. There were certainly some things he did that were rather peculiar. Sheridan would have no use for Dickie Boke at all. He thought he was Communist, or pretty close to that. There were some people there--my goodness, I get into all that stuff. All the fellow-travelers and Communists and that stuff. There were a lot of them in Washington. I don't think many Democrats were. I know I wasn't and I don't know who was, but Sheridan tells me some of the wildest stories there about how they tried to get him and how they tried to get LaFollette and LaFollette committed suicide and Harry Dexter White and so forth. That's all just talk as far as I'm concerned, but after all Sheridan saw them operating in Washington and on himself. I didn't.

IRRIGATION DISTRICTS ASSOCIATION

Baum: Are you associated with the Irrigation Districts Association?

Downey: I was. I haven't attended any of their meetings for a good many years.

That's a very powerful organization. I used to attend those meetings regularly. They make studies relating to the various problems confronting irrigation districts and water problems, do good work, have very good men on their committees. I was on some of those committees at one time.

They have a great deal of influence on legislation and properly so. You can call it lobbying if you like. They have Bob Durbrow now, it used to be Walter Wagner, come up to the sessions of the legislature. The association studies these measures and some of them they are for and some of them they are against. When I used to go there I think whatever they were for generally went through, they passed many measures. I don't think they get 100% now, but they get a very good percent of what they are for and kill many things they are against. They follow the legislation very

carefully. Of course, they know what they want. They are all men who have given a great deal of thought to these matters. They are a strong organization and I think they're a good organization.

Baum: Did you work with them when A. L. Cowell was their attorney?

Downey: Yes, I worked with Al for many, many years. He was the attorney for Merced when I went there. He's not living now.

Baum: I understand he used to do all the legislative work for the Irrigation Districts Association.

Downey: He did a lot of it. And Walter Wagner, who I think at that time was secretary, did a lot of it. And Bob Durbrow is doing it now. They have a meeting of the association here in Sacramento about March and they go over all this legislation and again you get the democratic reflection of ideas and sentiments. They have an executive committee that may take a good deal of interest in them. It's more centralized now than it was in Al Cowell's day, but Al was one of those very fine men, a very able man.

Baum: Did you know Wagner well?

Downey: Yes, I knew him quite well too.

Baum: What kind of a man was he?

Downey: Well, he was much more the promoter type. He undoubtedly was largely responsible for the organization of the Merced District and then he later went with I.D.A. He was an able man and he devoted a lot of time to that association. He could be a little autocratic in what he'd order and what he wouldn't, but actually he was a good man.

Baum: Did you feel there was any change in policy when he died and Durbrow took over?

Downey: No, I wouldn't say so.

Baum: You felt it was just the same?

Downey: The Irrigation Districts Association, they're aggressive and of course they were very s trong supporters of my brother Sheridan in connection with the 160-acre limitation and his fight on the Reclamation Bureau. But I think they've been a very, very good organization and the State Engineers have always worked with them. Harvey Banks works with them now. Hyatt used

to work with them, Edmonston, all those people.

Baum: I know they are now against the 160-acre limitation.

Downey: Oh, very strongly.

Baum: I wondered if they were in Wagner's day. Of course, it wasn't an issue...

Downey: I can't remember any time when they weren't against it, if their attention was directed to it at all. You see, there are so many men in these irrigation districts that had more than 160 acres. I think they're practically unanimous, as far as I know, the association. Individual farmers may feel differently about it.

Baum: Did they take any stand on public distribution of power?

Downey: Yes, they were very strongly for public distribution of power and the Irrigation Districts Act was amended somewhere in there so as to give irrigation districts the right...

Baum: Was that Modesto?

Downey: Probably Modesto. They were the bell-wether on that. They certainly always supported that as far as I know.

Baum: Somebody told me that they had switched over later. During Wagner's time they had been for Modesto acquiring their own distribution system and after that the I.D.A. had sort of taken the other point of view.

Downey: Well, I'll say this, there's quite a strong influence in the I.D.A. among certain people there who are public utility minded. They certainly are not as radical about it now as they were in the earlier days. I suppose if you'd take a vote now there might be a good many people opposed to it, I don't know.

Baum: Hasn't SMUD just joined recently?

Downey: I don't know.

Baum: I just wondered if SMUD had any influence on the I.D.A. in that respect.

Downey: I don't think so. Certainly I haven't known about it. I hear of those things if there's anything very controversial about it.

Well, McCaffery, the manager, he doesn't want to get into the public controversial issues, he's running his business and doing a good job of it. When he has

to slap knuckles of the P.G. & E. or they want to slap his, they do it, but they don't get into anything unless it's warrented right in connection with some particular question they are interested in.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

Formation of the Sacramento Municipal Utility District to Provide Water

Baum: In 1921 the Municipal Utility District Act was passed and I understand that that was in good part due to Louis Bartlett. He was mayor of Berkeley at that time and he was trying to organize the East Bay Municipal Utility District.

Downey: I didn't handle the actual formation of our district, but I'm sure Louis Bartlett was active there, as he was in so many of those matters.

Baum: Did you know Mr. Bartlett at that time?

Downey: Yes, I did. He was rather socialistic in his outlook, you know. He was very much interested in these various organizations and I have no doubt that he did have something to do with the formation of the district.

I might say that the district was originally organized to provide clear water for the City of Sacramento, Silver Creek water, but it changed later on to a power district. That came later in 1932.

Baum: Oh, it started out as water?

Downey: That was the theory of it at first. They submitted

some water propositions but they didn't carry. Then, at the time the bonds were approved, 1933, the Central Valley Project was being talked about and they knew there would be power from Central Valley. So then they submitted this issue for twelve million dollars for power.

Baum: Then you feel that the idea of going into the electric business didn't come up until the Central Valley Project?

Downey: I don't think it did, Mrs. Baum. I wasn't active with the district at that time. I was employed immediately after the bonds had been carried. In fact, I was active after the approval of the bond issue. Up to that time it's my recollection that it was only concerned with water.

Baum: And they didn't get their water?

Downey: No, that was turned down.

Baum: Then why did the voters vote for the district in the first place?

Downey: Well, it takes a two-thirds vote to get the bonds. There was some feeling that the water project was unnecessary, we thought we had lots of water in the

river, bringing it down from Silver Creek would be a very expensive thing. There was some question about whether the engineering was sound. I might just tell you that there was a good deal of feeling that Bert Given, who was then the engineer for the district, was rather extravagent. He was a fine man. And P.G. & E. didn't want us to get into the water business at that time. In fact, they didn't want us to get into any kind of a business.

Baum: Back in 1923?

Downey: Even as far back as that.

Baum: Was there any idea that the Sacramento Municipal Utility District would get into electric power back in 1923?

Downey: Perhaps, but of course, the P.G. & E. always surmised that these districts, once they get going, they go from one business into another.

Baum: Well, I can see why the P.G. & E. was against any further development of municipal power.

Downey: And this particular section is pretty much the heart of the P.G. & E. system. When you take the load out that is supplied by SMUD here. But on the water end

of it, it was more just a vague fear of what might happen if they once got into the water business. The city was already in the water business.

First Bond Issue

Baum: What was the impetus for SMUD to get into the electric business?

Downey: There were several things. One was Central Valley.

Baum: Was there any particular dissatisfaction with the P.G. & E. at that time?

Downey: Only the dissatisfaction that is pretty common with respect to all public utilities. Public utilities are never loved. The idea was that when Central Valley came in power would be pretty generally very, very low and it could be acquired at that price. I might add that there was another plan that was considered under which the utility district would get one of those PWA grants. Then the P.G. & E. would take the water and sell us the power. One of those things they are advocating in connection with Trinity, they'd control the power in the final analysis.

Ickes was then Secretary of the Interior and he was a tough man to deal with anyway. I knew because

I had a number of contacts with him. We didn't particularly want to do anything like that anyway so it just gradually evolved around to a straight power issue. Knowing that there were no generating facilities, we'd just have to either take over the system of the P.G. & E. or we'd have to build our own, it was left entirely up to the voters at the time of election. That is, twelve million dollars to acquire and/or construct.

Baum: You weren't interested in generating power at that time. It was just distribution?

Downey: Well, we talked about it, and it was talked about in connection with this Ickes grant. And of course the P.G. & E. was very anxious to have us go in on something like that. They were willing to buy the power from us, but they wanted essential control before they got through with it.

B aum: They wanted to distribute it?

Downey: Just like they talk about buying the falling water at Trinity now. They have to follow through these things, I guess, but I've never seen them want to give up their control. Except they do make contracts.

They tried to make a contract with the Merced Irrigation District, that was then the San Joaquin Light and Power Company, under which it wouldn't be our power plant in the sense that we understand it now. They're alert to their own interests.

Baum: Were any particular groups pushing this power issue, like the Sacramento Bee?

Downey: Oh, the Sacramento Bee always. They've always favored that policy, ever since C. K. was there. They supported the bond issue very, very strongly with all that progressiveness the Sacramento Bee is noted for. They are a power politically here. I've been their consulting attorney on a number of things. C. K. in his will laid down the principles they were to follow through on public ownership and they followed right through with that. The Bee was undoubtedly the strongest single factor on the bond issue.

There were several organizations. The Grange undoubtedly was supporting it and several of the public ownership organizations.

Baum: Were there any individuals who were especially

strongly in favor of it?

Downey: There were quite a number of individuals. I wouldn't know just which ones to single out. Albert Elkus was president of the board and he was very much of a public ownership man. He had been mayor of Sacramento. He was very strong for the water project in the first place. Of course, George Sehlmeyer, the Grange man. All of those organizations that are more or less commonly supporting public ownership, they were quite active.

Baum: Then the board of directors of the utility district favored going into electric power strongly at the time?

Downey: At the time they finally submitted that issue, they figured they couldn't be successful in the water project and they figured power was the thing to do.

Baum: They felt they had to do something?

Downey: Well, that's probably true too.

Baum: I noticed that just about the time the bond issue went through Elkus was succeeded by Royal Miller.

Downey: Yes, and Royal Miller since that time has been the chairman. It's a funny thing. I think Royal

originally had the idea that he'd better take over this district to keep it from running wild. There were lots of people there, you know, who were afraid of the district going wild.

Baum: He was more conservative than Elkus?

Downey: Essentially he's a very conservative man. He and I have had many a controversy politically, he being a Republican and I a Democrat. He didn't like Roosevelt, he didn't like the liberal policies. But, like all men who get into a thing, he believes in SMUD. He's almost fanatic on the subject. Even the Republicans can be wrong.

Originally some people were worried about just what this Frankenstein might do, but I don't think that any of us, and I do include myself, realized how big it could become. Some people said the labor unions were going to take it over and they never did. We've been very careful on our labor relations there and Royal Miller has been very helpful in that respect. Of course the labor group favored very much the bond issue. I think all labor unions favor public ownership. The city took over the buses here just recently

and the labor unions were very strongly for that. I suppose some of them thought they would get very much better treatment. Well, the treatment of the laborers there, the staff, the workers, has been excellent. A good retirement system. It's been very well done, but they haven't run away with it. Some people thought the labor unions would just demand anything they want for compensation and get it, but there's been no difficulty of that kind.

Baum: There was a time, I think about 1934, when there was a little trouble with the labor unions. I think Royal Miller refused to make a contract with the International Brotherhood of Electrical Workers.

Downey: I think that's true. I'd forgotten that. I think the labor policy is very sane.

Baum: Civil service type, isn't it?

Downey: Yes.

Baum: In this election of 1933 when you got the bonds voted, did you take any part in the election itself?

Downey: Well, I was for the bonds.

Baum: Did you do any campaigning?

Downey: No. In fact, I knew what was coming to me so I kept...

they told me at one time they wanted me to act for SMUD when it went into the water business. I was in no position to do it then anyway, so I passed it off. "Wait until we get those power bonds." Well, I was employed almost immediately after the bonds were carried.

Baum: I understand P.G. & E. put up a terrific fight against the bonds.

Downey: That they did.

Baum: And there was an investigation and it was found they spent $26,000, I think.

Downey: It was a lot of money. They couldn't get publicity unless they issued letters or things of that kind. They had ways of spending money. They know how to spend money too.

Baum: It was Senator Garrison who requested the investigation.

Downey: He was in the legislature.

Baum: I was wondering if you had any contact with him at that time?

Downey: No, I have no recollection of any...I know Garrison, have been in touch with him from time to time, but I

have no recollection of having talked to him about that.

Bond Validation

Baum: Then you came into the picture with the bond validation fight.

Downey: Yes, almost immediately we filed a bond validation suit. You don't expect those suits to be contested unless there's something really questionable about what's been done. But this was contested, and undoubtedly the man who contested it and his attorney were paid by the P.G. & E. I'm satisfied of that. You couldn't prove it. Bond validation suits are generally brought, kind of a proceeding *in rem*, but that was contested.

Baum: You knew it would be, didn't you?

Downey: Well, we didn't know. The defenses were rather absurd defenses, it seemed to me. They were technical defenses. Somebody had evidently worked that up, I think, from the standpoint of the P.G. & E. and undoubledly retained an attorney who contested the suit. Judge Olney came in later on. He was a very fine man too. I respected and admired him. But that case,

there was no defense really and we validated our bonds.

Baum: You worked on that with Mr. Shinn.

Downey: Yes, I must mention Bob Shinn's name. Bob was the attorney for the district at the time of its formation, and had been for many years. When I was approached on this matter I told them I couldn't possibly go ahead unless they still continued to retain Bob Shinn. He was rather an older man at that time, a very, very loyal man. A good lawyer too. So I went in. Really, Bob was the attorney and I was just the consulting attorney. That went on for a year or so until after Bob's death. I can't remember when he died. I'm sure it was well before we had the decision of the Railroad Commission on the evaluation. But he wasn't able to do very much.

Baum: Then he handled the formation of the district.

Downey: Yes, he did.

Baum: And you carried the bond validation?

Downey: Yes, I don't think Bob ever had much to do with the bonds. He was associated with me, our names appear together.

Baum: I was wondering what his background was.

Downey: There were two Shinns who came to Sacramento, Bob and another brother, Al L. Shinn, the older brother, had a large practice here, an effective lawyer. Bob was a little more sluggish and he didn't have so much business and he was very glad, I think, to get this retainer of SMUD. It didn't take too much of his time, and yet it gave him a living. He did good work, though, he was a good man. But he was pretty well out of the picture, I'm pretty sure, before we got into any of the really complicated bond matters.

Baum: Was Judge Olney the attorney for P.G. & E. through all this?

Downey: He represented the P.G. & E. when it came to the litigation attempting to enjoin the bonds and I think he took the appeal to the Supreme Court on the bond validation suit. He appealed that from the judgment validating the bonds. All these cases go to the Supreme Court practically.

Baum: Had you worked with Judge Olney before?

Downey: Yes, I worked with him many, many years off and on. I'm working with him right now, not Olney because he's

dead, but his firm. Sometimes with them and sometimes against them. I was trying to recollect whether I had any cases at or about this time with Olney. I don't remember that I did. I had a number of cases afterwards.

Baum: Did he usually in these cases represent the private company?

Downey: Yes, he did in that case.

Baum: Was that the side he usually took?

Downey: I don't know. He was a man of high ethical standards. His son, you know, is an Assistant Attorney-General of the United States now. A very, very fine man. Their ideals were of the highest and their standards were of the highest and they're good lawyers too.

Baum: I know they handled a lot of the water cases in this state.

Downey: They did and I'm trying to recollect--I don't think they had any particular feeling one way or the other about public ownership. They represented the P. G. & E. in a number of matters.

Baum: Thomas J. Straub was associated with them.

Downey: Yes, Tom Straub was then the counsel for the P.G. & E.,

another very old and dear friend of mine. He and I went to Ann Arbor together. We had some wild old fights. I never was on the same side as Tom.

Baum: Then you did have at least one friend here who'd gone to school with you.

Downey: Oh, we were friends all right. Friendly enemies too. Of course Tom, that was his business. He was the regular...P.G. & E. attorney. He finally became their chief counsel and is now retired.

Valuation Proceedings Before the Railroad Commission

Baum: Weren't you pretty sure you were going to win these cases against P. G. & E.?

Downey: On the bond issue, yes. I don't think they had any ground to contest the bonds at all. But you never know because those cases go through various courts and finally end up in some form in the United States Supreme Court and you never know just what will happen. But I thought we'd win them.

But the most difficult of all was to get a valuation on the P.G. & E. properties from the Railroad Commission. The amount, of course, would determine whether we could take the property or not

because we only had twelve million dollars in bonds and it was quite possible the valuation would be fixed at a price we couldn't afford to pay. I wasn't at all sure of that until we got our judgment. In the meantime the case had dragged along so long that they had additions and betterments we had to pay for too. In the end we had to sell our bonds at a premium to get enough money to satisfy the award of the Utility Commission.

Baum: That valuation dragged on from 1938 to 1942 and then the P.G. & E. contested the right of the Railroad Commission to condemn in court. I appealed the evaluation case because I thought maybe the Supreme Court would not allow them to include certain elements that I didn't think should be included. The Supreme Court refused to interfere with that. Then we had to file a suit here in Superior Court to condemn the property because the valuation of the Commission doesn't determine our right to take the property. It merely determines what we'll pay for it if we do take it. That case was very hotly contested too by the P.G. & E. and that went to appeal in the District Court of Appeals.

In the end we won that too. But those cases were all more or less touch and go, although I never had any doubt as far as some of the cases were concerned that we would win them.

Then we sued them after all this was all over, under a statute that provides that if any public utility unsuccessfully attempts to enjoin the sale of public ownership bonds you can recover the cost and expenses. Well, we didn't get all the costs and expenses by a long ways, but we got quite a lot of it. That went to the Supreme Court too and then to the United States Supreme Court on the grounds that was class legislation.

Baum: I was going to ask you if you'd gotten any money back.

Downey: We got quite a little bit of it back. That hurt them, that they had to pay some of our expenses.

Baum: This valuation proceedings that dragged on and on, how did you go about...was most of this private negotiation?

Downey: No, there were hearings before the Railroad Commission. They are deadly dreary. One of the engineers said, "There's no romance or sex appeal there." He was

dead right. How much man power to dig a post hole? All of the most dreary forms of appraisal entered into the reporduction cost new of this system and the historical cost.

A great deal of this work was done in the field by the engineers of the Commission and by our engineers. We had some good engineers by that time.

I don't think there's been any case like that in magnitude since our proceeding was brought.

Baum: Were there any attempts made to negotiate a selling price with P.G. & E.?

Downey: No, we never got anywhere on that.

Baum: They wouldn't negotiate at all?

Downey: They wanted their system.

Baum: Someone had told me that most of these public utility companies were willing to sell out if they could get a good enough price. You don't think that was true?

Downey: Just take North Sacramento for example. When I went in on that I thought we could negotiate a settlement right away because the people were willing to pay a good price and they had the bonds to pay them. They didn't want to talk to us at all about that. I've

never seen any of these public utilities that want to sell.

Baum: You think when they fight they really fight, it's not just a show to raise the price?

Downey: It's always been true with me, I know.

Baum: Franck Havenner was on the Railroad Commission.

Downey: Oh yes, and Franck was one of our best friends there.

Baum: And Richard Sachse.

Downey: Yes, he was strong...both Havenner and Sachse dissented from the opinion of the Railroad Commission. We were satisfied with it way down deep, but we did think maybe we could get by without the allowance that had been made for going concern value and the good will factor and so forth.

Baum: Oh, was that the difference? I know they thought you were paying too much money and I wondered what was the difference there.

Downey: They adopted our argument there. We thought so much of it that we took it to the Supreme Court. Sachse was a Culbert Olson appointee and he was very strong for public ownership. A very good man too. He must have been-he was on our side.

Baum: Do you feel most of the other commission members were against public ownership?

Downey: Well, I wouldn't go that strong. I think they were inclined to look at it more with an open mind, more of the private utilities point of view. No, I think they were all good, sincere men.

Baum: People have said that many of the member of the Railroad Commission are sort of henchmen of the P.G. & E.

Downey: You take a commission like that that has such enormous power over public utilities, there's always the attempt by public utilities to acquire outstanding influence there. There have been men on the commission --I don't say any of these men were that type because I don't think they were--over the years who have become rather public utility minded. Today, with Peter Mitchell there, he's not that type at all. In fact, I think his feelings have always favored public ownership, and he's fair. Take Dick Middlestaat, who's retired now, same type.

There was one man went on the commission and shortly after being on the commission he resigned to take a high position in the P.G. & E. That was one

of Warren's appointees. Earl told me that he was very unhappy about that and I'm sure he was. I don't think he was dishonest, I think he made a big mistake in doing that.

Baum: That's the kind of fact that is cited when they say the Railroad Commission is for the P.G. & E.

Downey: The P.G. & E. doesn't overlook a bet on those kind of things. They like to be friendly to the men who control their destiny, so to speak. It's a powerful organization.

Baum: It certainly is.

Downey: I was talking to the chief engineer the other day. I took him to lunch. I was talking about several of the people from P.G. & E. whom I have known and been friendly with for many years. I told him that some of my best friends had been there and I said, "I like them. I respect them. I've fought with them all my life. Most of my work has been in opposition to the P.G. & E." We had a very nice little conversation. He said, "Well, you're right about it. They're all fine men, but of course they're loyal to the P.G. & E." That is true. But I like them, I respect

them, and I look out for them because they know their business.

Baum: Well, the fact that you're friends probably makes it possible for you to carry on better negotiations.

Downey: I think so. I have a number of matters with them right now. I'm representing the Hearst Company, this big Wintoon Ranch on the McCloud River, almost like San Simion. The P.G. & E. and one other public utility are trying to acquire their water rights. We conduct those negotiations in a friendly way. But I have to know what I'm doing because they certainly do.

If I have had any success, and I don't say I have, the personal element doesn't enter into it at all. I can fight about some issue or some thing that I'm trying to do, but the personality, I can entirely overlook the personality. As I say, I like these people, find them fine men.

Baum: Don't you feel that it helps for you to be friends?

Downey: Yes, I think it does, without giving anything at all. Because you respect their motives too.

Baum: Did you feel this valuation, I think it was $11,632,000 was fair? P.G. & E. asked you for $18,000,000 to start with.

Downey: Yes, I think it was fair although we would have liked to get it even lower than that. But we were satisfied with it.

Baum: You fought that through with Martin McDonough.

Downey: I had a lawyer with me. That was one of the conditions under which I took the employment, a man by the name of Marshall Taylor. He gave all his time to it and worked with me and helped me very, very much. Just before we got to the decision of the Commission, he left and went down to the southern part of the state. We had toget somebody right away. We just had to take a man, take a chance on him. Martin had been with the Legislative Counsel Bureau. We just took him by guess. That was after the Railroad proceedings were pretty well over, just before we got into the court proceeding. And Martin was a find. We hit the jackpot. He's become something of a protege of mine. I have to say something about Martin. My wife says, "What does Martin say about this. What does Martin say about that?" (laughter.)

He's a very fine young man. He kind of saw the glamour in these water matters and he's taken it up.

I've had to throw him many, many cases just to save myself and he's done a wonderful job. He's a comer.

He became house attorney for SMUD for a number of years. Then he gave that up to get into the field of water law. Right now, when we have all these hearings up before the State Water Rights Board, he's carrying them on. He's an engineer as well as a lawyer. I think he's the best man in the state on water now.

Baum: And he hadn't been water when you got him?

Downey: No. He'd been with the Legislative Counsel Bureau, drafting legislation. All fine training. But I had no idea we'd ever get hold of a man like that. He's now become indispensable.

Baum: So it was really this case that set him on the road of water law.

Downey: Yes. Right after that we took possession of the property he became the house attorney and on the legal end of things he took hold wonderfully well. He consulted with me from time to time, now I with him. Now he's back there doing consulting work that I formerly did. An outstanding young fellow.

Baum: All the while you were fighting these cases, did that take all your time or were you able to carry on the rest of your practice?

Downey: I did other work, but it certainly...during the time we had those injunction cases and proceedings before the Railroad Commission, it didn't take all my time but it certainly took 90% of it. And I worked longer hours then than I do now.

Baum: And that was all on a fee basis or a retainer?

Downey: Both. I'd bill them. It was kind of funny. Things were a little mixed up, there was no organization at that time. So way back at the inception of the proceedings before the Railroad Commission decision, the directors passed a resolution that I was to approve all expenditures of any kind. For awhile I was the whole show. I don't think at that time that anybody thought the valuation would come out satisfactorily.

I had to laugh. McCaffrey, the manager gives a little annual party and we have a few drinks. He's quite a...I wouldn't say martinet, but he's very strict on the affairs of the organization. So I said I wanted him to hear a resolution that was passed by

the directors at one time and I got a copy of this resolution where they had authorized me to approve everything that was spent and whatever I said was all right. That was before he came there. He came to the district after we got started on the Railroad Commission case.

Negotiations to Purchase Power from the Central Valley Project

Baum: SMUD began operations on the first day of 1947.

Downey: Yes, we had a little ceremony over there at the court. The judge signed the order that the appellate court had approved.

Baum: Did SMUD purchase power from P.G. & E?

Downey: Yes, we had no generating facilities and Central Valley power was being pretty largely bought... P.G. & E. had contracts on that. It wasn't ready for sale to us yet. Our purchase of Central Valley Power came later. Over the opposition of P.G. &E.

Baum: Was part of your job to negotiate a rate with P.G. & E. for these first power purchases?

Downey: I think they had a contract rate there that we accepted. Shortly after that they made an attempt torevise all their rates, including ours. We

had a fight with them on that. That was another proceeding before the Railroad Commission. They raised many rates, but not ours. The Commission held that they were bound by the contract they had already made with us. Then came the opportunity to buy Central Valley power.

Baum: Before that they'd lowered their rate because Roseville had just signed to take Central Valley power and I think P.G. &.E. came out a few days later with a revised schedule of rates that was considerably lower.

Downey: I think they did reduce those rates to some extent.

Baum: In 1952 the P.G. & E. and the Central Valley both began to negotiate with SMUD in competition with each other.

Downey: That was true. The P.G. & E. was very upset when we signed our contract with the United States. Of course, they would be because they couldn't give us a rate like that. As I remember, McCaffrey wrote to them and to the federal government and asked for offers. The P.G. & E. and the United States were to submit their offers at a certain time. What

finally happened there, I don't recollect. In the meantime we got this offer from the United States and it was much better than the P.G. & E. offer. They wanted to continue to negotiate. Norman Sutherland, the manager of the P.G. & E., was most unhappy. But there were so many things about that contract in addition to the price that were favorable to the district, we just couldn't negotiate any longer with the P.G. & E. on that.

Baum: I understand that there was a lot of opposition in the California legislature against SMUD taking the contract with the United States.

Downey: There was opposition everywhere. The Republicans, some of them anyway, didn't think we ought to make a contract with the United States when we could make a contract with P.G. & E. Lots of people felt that same way about it.

Baum: What reasons did they give?

Downey: Oh well, it was socialistic, you know.

Baum: It seems to me that you had asked for competitive bids and then you accepted the lowest bid, which is good business.

Downey: We had. Aside from that, it was obvious that it was to our interest to make this deal. Then, the Eisenhoser administration came in and the whole thing was hung up again because lots of the people in Washington didn't like it. I don't think the Assistant Secretary of the Interior liked it either. We had the fight all over again in Washington. We had hearings before Congress on it. I rather credit Knowland with actually finally getting the signature in Washington of the Secretary of the Interior on our contract. I really give him credit for that. He never said that, but I think he interceded with the Secretary of the Interior on that himself.

Baum: I would rather have expected Knowland to be against this.

Downey: No, Knowland is conservative, but I've always found him very, very helpful and right in these matters. I think he's the man who finally pulled the card out of his sleeve on that one. Kuchel helped.

Baum: One of the factors in the opposition to this SMUD

contract was that the rates were too low and that with these low rates it would not be possible for California to purchase the Central Valley Project.

Downey: That was one of the things they talked about all right.

Baum: Wasn't Knowland for California purchasing the Central Valley Project?

Downey: I don't know, I doubt it. Well, they never really got to the point where it was really a clear issue in Congress. Knowland probably did favor that, but this other would only be a detail of that. Whether we could buy Central Valley or not would depend on a lot of other things.

Baum: Yes, except that a higher rate would permit California to pay off the bill and a lower rate would make it impossible.

Downey: Lots of the people who favored that purchase were very much opposed to the contract, there's no question about that. They had innumerable conferences about that and never did finally get down to anything you could call an issue on it.

Baum: Has SMUD taken any position on whether the State should purchase the Central Valley Project?

Downey: No, except we want our contract honored.

Baum: Do you have any opinions as to whether it would be better for the State or the federal government to operate it?

Downey: It never looked to me like California could do it. One of the things was people like my brother who wanted to do away with the 160-acres limitation. It would have done that, but it never looked feasible to me at all.

Baum: Too big a financial undertaking?

Downey: Too big, and why you'd give up the financing we were getting from the federal government, throw all that on the state itself, I could never see. I never took any particular stand on it because it never was clear to me just what they were going to do

I talked that over with Earl Warren many times. I think he looked at it like I did. Warren, he's a very sane man. He was a good governor too,

as he's now making a great Chief Justice.

Baum: Getting back to SMUD, did you feel that the contract you were able to negotiate in 1954 was as good as the one in 1952?

Downey: With the Central Valley Project?

Baum: Yes, with the Eisenhower administration.

Downey: It was the same contract finally. They okayed it. We had a hard time of it. We finally met over there at the Secretary of the Interior's office with Knowland and Kuchel, all the top brass. Knowland told me in advance what the result was going to be. That was just a nip and tuck for a long time. We didn't know what we'd have to do. We were going into court if the Eisenhower administration turned it down, but we didn't have to do it.

But it is my own private feeling that Knowland was the man responsible for it. Kuchel worked on it too, both worked on it, and they helped us a great deal.

Management of SMUD

Baum: You've mentioned Royal Miller, the president of the board of directors, who came in at the same tij SMUD went into the power business.

Downey: Yes, he's still president. He's retired from business now. He doesn't have much to do except to carry on his interest in SMUD. He 's been a tremendous power of strength. He's got a good business point of view.

Baum: What was his business?

Downey: He was an automobile man, had Dodge and Plymouth cars for many years. A man of great ability and great energy. He has made a wonderful president.

I might say that the thing that has really made SMUD successful had been management. Royal Miller on the board of directors and there are other men there that followed with him. He's been the chairman and the man who has really spoken. And James E. McCaffrey, the manager. The whole staff, they have a very, very able and outstanding staff. There has been no attempt on the part of the directors to take over the management

of the thing. It has been carried just where it should be by McCaffrey, with the assistance of Royal Miller on policies. That has been the really successful thing about it.

Soemtimes I worry a little about what might happen if you get in a board that's trying to work politics or something except to distribute power. That has never happened yet. We have a good board.

Baum: At the time Royal Miller replaced Elkus, was this an attempt to keep SMUD conservative and going along sound business principles?

Downey: Well, I don't think Royal ever did it quite that way. But he thought they'd better watch this district here which was obviously getting more and more strength as time went by and which when it once got into the power business with the great block of power we have here, it could really do many, many things.

Baum: When they have a election for members of the board...

Downey: I think we elected two directors this year. Royal was one of them and Ted Labhard was another.

There's an alternating system.

Baum: What kind of campaigns do they make? Is there a lot of competition to be on the board?

Downey: There hasn't been. That has been one of the things that has been good too. There's been practically no contest for directors there for years. The same men have served there for a number of years, headed by Royal since Albert Elkus retired.

Baum: I was wondering if P.G. & E. tries to get men elected to the board who might be against expansion.

Downey: Not that I know of, and I think I would know about it.

Baum: You don't think they've entered the campaign.

Downey: No, I don't think they have. They might at any time, but with the Bee here, a militant paper like that, it can spot things if there's any trouble.

Baum: Have they ever tried to influence the board members.

Downey: I think not. They know all of us and they know it would be a very hard thing to do in that was. No, I think they've played the game square all right.

Baum: Are the businessmen who run for the board...is that a good position for a man to take? Does it

have prestige or any advantage?

Downey: It's quite a responsibility. They don't pay much. The only man who's paid is the manager and the staff. It doesn't take too much time. Like everything else, it grows a bit. They're certainly going to get into a lot of new problems on this hydroelectric development when they get to that point.

Baum: Are businessmen eager to serve on the board or do they try to get away?

Downey: There's been no particular demand for that at all. The same men have just kind of held on and there's been no particular objection to them and so it's gone through the years.

Baum: What sort of a man is James McCaffrey?

Downey: McCaffrey is not a public ownership man in the sense that so many of these men are crusaders. He was a administrator and an executive himself. He just runs this a good deal like any good executive would run a business. He has none of that emotionalism that you sometimes find with a public agency organization, including probably my own. He's not that type. He's a very able administrative man.

With the help of Royal Miller who has a lot of business savy and Royal Miller's ability to work with his board, it's been a great success. There canbe no question about that. I'm very fond of both those men as you probably understand.

Baum: Has SMUD taken any part in promoting public power for other districts?

Downey: Well, I don't think they have. They're sympathetic, of course. They certainly haven't taken any position against it. McCaffrey's quite a fellow to just run his own business. That's why he's so successful at it.

Baum: Are the rates SMUD charges as low as possible or do you try to make enough of a profit to have money for further construction and so on?

Downey: They've cut their rates, but at the same time McCaffrey's conservative and he plows a lot of money back into construction. There's been an immense amount of that by reason of the extensions here.

Baum: Do you have equal rates for household consumption and industrial consumption?

Downey: I suppose the rates are different.

Baum: Well, yes, of course they are, but sometimes you can try to encourage industrial consumption by lowering their rates and then charging it onto the householders.

Downey: I don't think they're doing it now. Maybe they should. That's one of my problems on the Port District here because we've got to build up some industries here. Maybe I'll be fighting SMUD on that some time.

Baum: Then you don't think there's a policy of trying to subsidize industrial use of power.

Downey: Not to my knowledge.

Baum: Now the city handles the water and the utility district handles the electricity?

Downey: The utility district has been under a great deal of pressure to take over the water too, but they are very much opposed to it. We have a very excellent water service here in Sacramento. We have no meters, we get ample water. I think people are rather satisfied with our water system now although there are people who keep maintaining

that that should be taken over by SMUD. But McCaffrey is very violently opposed to it. He doesn't want to get into the water business and thinks it would not be a good thing to do.

Hydroelectric Development on the American River

Baum: That brings us up to the problem of the American River development. First there was a contract made with P. G. & E. for firming power.

Downey: Yes, we have that contract right now.

Baum: Rather than building your own steam plant.

Downey: We thought at one time we'd build a steam plant. We've got to firm up the power because it's just being exhausted. We contemplated building our own steam plant. Well, there were many economic objections to that. We had tried to get through the legislature in past years legislation for revenue bonds. Never got it through, largely through the opposition, I think, of P. G. & E. They're a power on that. So the first thing we did was to enter into negotiations with P. G. & E. under which they agreed to firm up our power when we needed it and then they also agreed not to oppose legislation which would give authority to issue

revenue bonds based on hydro-power. Then that legislation went through at the last session of the legislature.

Baum: Was that sort of a trade? You traded a contract with P.G. & E. for them not to oppose your revenue bonds?

Downey: Well, I wouldn't want to call it that, although both factors undoubtedly entered into it. We did want to get hydroelectric power. We wanted revenue bonds if we could get them. If we couldn't get them on the basis of steam power we wanted hydroelectric power. Anyway, we entered into this contract and they said they wouldn't oppose our legislation and they didn't. They were true. I wouldn't say there was an exact agreement between the parties, but undoubtedly those things all entered into it.

Then we get the legislation. Then we take proceedings for the issuance of eighty-seven million dollars in bonds.

Baum: Which are revenue bonds.

Downey: Revenue bonds only, based on hydroelectric power.

Nothing on steam plant. Those carried 8 to 1. Again, the Bee was one of the factors there on that vote. Then we have to bring litigation there. That's not the P.G. & E. at all. That's just litigation to establish our right to issue these bonds. We've got a decision in that. Now, the next step is to get our power and water permit so we'll be able to construct our project and power license.

The proceedings are going on now on the issuance of our permit and Martin McDonough is handling that himself and doing a good job of it. We're trying to get simply our power permit now and then we'll sell our bonds if we can get our power permit and license. Then all the other questions involving the water rights on the American River, which are complex, will have to be heard. I don't know when that's going to end. I'm glad Martin's doing that now.

Baum: Why do you think P.G. & E. objected to your building a steam plant but not to a hydroelectric plant?

Downey: I can't answer that. I don't know. I never thought they would. There's some reason there. Maybe they think we'll make a failure of our hydroelectric power.

It costs a lot of money. I wish I did know.

Baum: You don't contemplate them entering any sort of litigation against your American River project later on?

Downey: Well, Mrs. Baum, now you're asking a hot question. We haven't thought so and I don't think so now. But when the State Water Board was in session last Thursday, suddenly it seemed that the P.G. & E. were protesting our power application. The air was hot. I wasn't there at the time, but I had the word very fast that it was time to get on the ball. Well, it ended in an adjournment until Wednesday, day after tomorrow. Today McCaffrey is meeting with the P.G. & E. They're going to talk over this thing. I don't think they're going to fight it, but it could be.

Baum: If you get your American River development all completed, will you still need to buy firming power from P.G. & E.?

Downey: It's possible, and we're hoping to get some more power from the United States, Trinity. Of course, the P.G. & E. is trying to get the falling water there.

And we're beginning to think about atomic power too, by and by.

RECLAMATION DISTRICT WORK

Present Problems of Reclamation Districts

Baum: I would like to ask you about your work with reclamation districts. Do you think reclamation districts are a dying institution?

Downey: No, I wouldn't say that.

You asked in this letter about what reclamation districts do now. Well, like driving an automobile, there's a constant correction you have to make. New work has to be done. Maintenance work has to be done. That goes on all the time. It's not like when they were reclaiming the Sutter Basin land, that was the Armour project. That was a fight, a battle all the time until those levees were built. Litigation, sometimes shotguns that weren't used. That's over now.

You take the Sutter Basin Reclamation District, that Reclamation District 1500, they still have plenty to do and I'm engaged right now in some law suits they have brought. Those changes are constant.

But certainly as far as reclamation districts are concerned, much of the groundwork has been done. But they're not dying by any means.

Baum: What kind of work have you, as an attorney for all these reclamation districts, been involved in?

Downey: Let me mention what some of the reclamation districts are that I represent. There's Reclamation District 1004, 1500, 108,999, the West Side Levee District, the Knights Landing Ridge Drainage District, oh, there are probably a dozen more of those districts. I'm in constant touch with them and they have their problems.

Baum: And you attend their meetings?

Downey: Not all of them, but a great many of them.

Baum: How often do they meet?

Downey: Take District 108, I'm thinking of that now because they meet Friday of this week. They meet every month. The Sacramento River West Side Levee District meets every other month. I have to attend those meetings.

Baum: If you attend all the meetings of these districts you represent, doesn't that take up most of your time?

Downey: It takes a lot of time. I don't attend as many of them as I used to, but it does take time. There are always problems that come up.

Baum: I was wondering how much of your time the reclamation and irrigation district work takes now.

Downey: I would say about twenty-five percent of my time.

Baum: Is that mainly on a retainer?

Downey: Generally I'm on a retainer.

Baum: Can you give me some examples of the kind of problems you deal with in your work with reclamation districts?

Downey: Yes. In district 1002, there's a question of drainage, a very important question. Certain lands get drainage and certain lands do not get enough. So the lands that are not getting satisfactory drainage want to have some drainage plan adopted by the district that will drain their lands, and the trustees, don't want to spend that money. Then you are confronted by the question as to whether you bring law suit and try to work it out by lawsuit, or whether to change the personnel of the board and put in your own people. That's the democratic way of doing things. That's just one of the current problems, not too big either. They are now considering whether they'll bring proceedings to call an election of trustees. I have to advise with them as to what they should do

because I'm representing that group of landowners who want the drainage. I have to see that the election is properly called and held, I have to attend the election.

Baum: Do you represent the district?

Downey: Not in this matter.

Now, in Reclamation District 108 not so long ago we had quite a revolution. I do represent the district there. Some of the landowners were dissatisfied with the way that certain things were being done and they called an election, and they elected a new board. Then there were problems on advising the new board. Sometimes we get thrown out. In this particular district I didn't. In District 1500 we are trying to recover market value for 5,000 acres of delinquent land that were sold at auction.

Well, there are constant problems. You see, in a reclamation district they vote according to assessed valuation, that is, every landowner has one vote for every dollar of assessed value, and so the large landowners control the district. Of course, very often what the large landowners want, the smaller landowners

don't, but the large landowners can generally control the board. In District 108 the district is largely controlled by a very few landowners, but nevertheless the small landowners have some power. They can cumulate their votes. In the 1500 district, the old Sutter Basin project, one landowner has the most votes, but other landowners generally combine to elect trustees who don't work with him. In that particular district we have a fight right now.

Baum: Is the main conflict usually over whether to do some contruction or not?

Downey: That's all involved, but so far as the flood control project is concerned, and that's the one that pretty well dominates whatever work may be done on construction, the Army Engineers do the work required in construction of new levees or raising heights of old levees or setting the levee back, that's all coordinated in the interests of flood control and the Reclamation Board has to furnish the rights of way. Generally they call on the districts to provide rights of way if the districts are interested in having the work done. So what you have to do when that situation

arises...well, right now it does arise in two or three of these districts. The Army Engineers want to do some work, the Reclamation Board wants the rights of way and they are very anxious to have us help them by securing the rights of way for them. We have that question up right now where in a couple of the districts they are not entirely satisfied with the work that was being done. So by a process of compromise, discussion, sometimes free for all meetings--we haven't had many of them for a long time. We reach decisions.

Baum: What sort of differences come up between the large landowners and the small landowners?

Downey: Very often the large landowners want things done for their interest and the small landowners don't want them done. It means assessments, it may mean assessments.

Baum: Say, a particular drainage project?

Downey: Yes. Or it might be drainage or many other things.

Reclamation District 108

Another problem is 108 which had a lot of money which we got by reason of the fact that we took over

delinquent lands and became quite rich, when prices went up. We had nearly 20,000 acres which had been sold to the district for delinquency out of an area of perhaps 50,000 acres, nearly half the land. We were in desperate shape. But conditions got better, the depression was over, and then we found that we had acquired title to about 8,000 acres of very valuable rice land, the cream. We accumulated several million dollars. Then the legislature wanted us to sell it and we had a big fight about that. We didn't want to sell it.

Baum: These lands are tax free, aren't they, when they are owned by the district?

Downey: Yes, the state wanted it restored to the tax rolls. Some of the legislators thought it was socialistic for the district to hold that land. Anyway, that problem is over. The legislature has finally decided we don't have to sell that land so long as we pay an amount equivalent to what the taxes would be on it to the county.

But there's a lot of money. We farm that land and there's a lot of income. Of course, there's

always a conflict where you spend money. Some of the smaller landowners want it spent on their property, some of the larger landowners want it spent on their property. We spent it recently a little too fast, I think. Others wanted to hold it as a reserve.

Baum: You spent it all?

Downey: No, not all. We're getting to the point where we wonder if we shouldn't stop and figure a little bit. We've probably got a half a million dollars left right now. We continue to get income from that land. Of course, it's a been a good expenditure, not just for the big landowner.

Baum: What percentage of the land in that district is owned by the district?

Downey: There's about 8,000 acres andthe district contains 50,000 acres, so that's substantial, but it's not a big percentage.

Baum: Why didn't the board of trustees want to sell the land?

Downey: Here they are farming the property. The income is tax free and if they sell it that would simply mean it would go off their rolls and you couldn't begin to get the value because the purchaser would have to pay taxes.

Baum: But now you have to pay the taxes anyhow?

Downey: The district doesn't pay any taxes. Well, we pay an amount equivalent to what the county would have assessed this property for, but that is very small compared to what you would pay for income taxes.

Baum: Oh, the income tax is what you save.

Downey: And that would be very heavy.

Baum: Andthe fact that the district owns this land reduces the assessments on the other landowners. Is that right?

Downey: Yes, as a matter of fact, we have, and I think we are the only district in the state that has, we pay nothing for maintenance because the money derived from farming our own property pays what would otherwise be an operation and maintenance charge against the landowners. I guess probably there may be some other district in that good position, I don't know. We've had no maintenance assessments for many years.

Baum: You don't feel this is sort of a Socialistic trend to have districts own property like this?

Downey: I had one senator in the State legislature who maintained this whole thing was socialistic and he was

determined that we'd have to pay taxes on it. No, I don't think it's socialistic, but what do you mean by socialistic? I remember when I was a boy in college they used to say that I was socialistic.

Baum: I suppose you are accused of that working for SMUD too.

Downey: Oh yes, SMUD is said to be socialistic, so many good things are said to be socialistic.

Reclamation District Assessments

You could cite instance after instance where the reclamation districts now have problems they have to meet and things they have to do. There was one little district--that was out near the H Street Bridge, near the American River. The theory was that when Folsom Dam was built we would have flood control on the American River, that is to say, Folsom would take care of the flood control on that land and dispense or reduce the by-pass. As a matter of fact we've got to have both flood control and the by-pass and we've got to have some levees. This is a small district, a valuable district, right near the City of Sacramento. They have problems necessary in order to build these levees and maintain

them. The Army Engineers will build the levees, but the maintenence is very heavy. So we're trying to work out some plan there under which the cost of maintaining those levees can be spread over a much greater area, either by consolidating with the American River Flood Control District, or by forming some kind of a maintenance project the state will take over. The Reclamation Board can form a maintenance project and spread the cost over a big area and very much reduce what would otherwise be almost confiscatory as to certain of the smaller landowners in this district I'm speaking of.

Baum: Aren't the assessments in a reclamation district based on the value of the construction to the particular area of land?

Downey: Generally in the past they have been spread on a basis of benefit. Recently there has been a law, there are some limits to it, but the law provides for maintenance assessments, which also were levied in accordance with benefits, to be based on ad valorem assessments of lands in the district. In that particular district that's been a very good thing because it would hardly

pay to levy a benefit assessment against all these lands. It costs money to levy all these assessments, money for engineers and lawyers and a lot of other costs. So they do levy an assessment now for maintenance based on the ad valorem value of the property as shown by the taxes. That hasn't been used to a great extent but is being more and more commonly used.

Baum: Spreading the assessment under the old system must have been very expensive.

Downey: It ran into a lot of money. The common practice was--let's say, take the Reclamation Board, it was the same situation. We had one assessment we figured would cost eight million dollars, estimated that as the cost. As a matter of fact these estimates were nearly always exceeded. I imagine in that case it ran up to twenty million, I don't know. Then you call in assessors. In this case we used Etcheverry, who was the professor of irrigation and drainage at the University, a dear friend of mine who has recently died, and two other men. They determined how much each piece of land within the area benefitted by

this improvement would pay. Having gotten that far then you think you can't make these calls two or three times a year so you bond the whole thing, issue bonds, and that's a lot of work and involves a lot of legal and other problems. That's what we've done in this particular assessment I speak of, but of course everything blew up before we got to the point of calling this assessment because we got aid from Congress. But it costs money, you bet. Attorneys have to live and engineers have to live.

Baum: In the financing of these reclamation districts, originally they issued warrants .

Downey: Yes, sometimes they issued warrants without ever levying an assessment. The theory was this, that whenever they had determined to levy an assessment they could issue warrants and then later on when the assessment was levied and the money had been paid, they could take up the warrants. There was some pretty frenzied financing because the contractors would come in and bid on the work and they would add a lot to their contract because they were getting only paper at great big discounts to negotiate and

that is one of the reasons this work cost so much. Now, as far as any district I'm interested in is concerned, we don't issue any warrants until after we have made arrangements for the assessments and perhaps for the issuance of bonds to avoid that thing and I'm sure it's been helpful. But in the old days they were so anxious toget things underway and get things going and it was very essential that they did too.

Baum: Do you feel the issuance of warrants in the old days was inadequately controlled?

Downey: I think it certainly added a great deal of cost onto the cost of reclamation. In one district I acted for some of the warrantholders, (which I generally don't do, I don't like to represent the warrant holder or bondholder) I had to represent the bond-holders, that is to say, the people who actually got the bonds and who in turn had taken the warrants from the contractors, and there was a big differential there, they took them for more than was represented by useful work. What happened was that people wouldn't pay. Of course, you can go through court and try to

make them pay, but that's not a nice thing for a big agency representing a lot of landowners. Moreover, sometimes your heart's not in your work. But in that particular case we finally reached a settlement under which the bonds were taken care of.

Baum: Did you settle for part payment?

Downey: Yes, it was for about fifty cents on the dollar as I recollect.

Comparison between Irrigation Districts and Reclamation Districts

Baum: I've heard reclamation districts criticized for not having sufficient control over the board of trustees.

Downey: Well, it's certainly the larger landowners of reclamation districts who control the trustees. Sometimes they're more interested in their own particular land than anything else. In an irrigation district every registered landowner has a right to vote so the control is not in the bigger landowners. On the issuance and certification of their bonds, that requires the assent of the District's Securities Commission to certify bonds. Yes, there is much more control in an irrigation district. The control of reclamation districts, andthere are other types of districts,

through a vote of the assessed valuation is very questionable in many cases. But as a rule again I'll say this, the larger landowners are interested in a safe district. But I've had my fights.

Baum: Do you think the irrigation district method of one vote per landowner is better?

Downey: I think the irrigation district control is very much more democratic and I have found in my representation of irrigation districts, there are exceptions, I have found the trustees very fine...A meeting of the board of trustees of an irrigation district is a good deal like a town hall meeting. If there's any very important issues all the landowners are there to express themselves in no uncertain terms. A reclamation district can be quite different. But in the main now, I think the reclamation districts are necessary for the development of lands in the Sacramento Valley. That's more particularly where they flourish.

Baum: I've heard that the trustees sometimes engage in speculation with the warrants and bonds and enrich themselves to the detriment of the public. Have you found this to be true?

Downey: No. There probably are cases where that is true. Very often people will come to me contemplating the organization of some district. What law shall we operate under? That's the first question. They have to consider whether they want the control in the hands of the large landowners or whether they want it in the hands of the registered voters. All those things require analysis, depending on what the particular problem is.

But I'll say this now, I think the reclamation districts were probably essential in the earlier days here. I think they did a great work. They made mistakes, at times they spent too much money, but they have written a lot of the history of California which might not have been written if all the landowners had an equal share in the operation of the district. I've represented many of these reclamation districts, and a good many irrigation districts too. I certainly enjoyed my work with irrigation districts.

I talked to you about Merced. That was a great district, they were great people, and I think the directors were great men. They were a little uncouth.

They could swear at the landowners and the landowners could swear at them, but I think they did a great work. When we came to refinancing I think they did a great work too. I told you about this juror in one of my cases who was one of the farmers down there who said, "By God, no, it ain't right." And he got what was right too. They could be pretty tough, but they were good. I've always liked those meetings. They were big, big problems and they were handled, I think, fairly. Sometimes we had to argue with them about certain things that were done, but I think it was a very creditable, democratic organization. Again, your irrigation districts, at least the ones I'm representing now, they have problems but nothing like we had in Merced in those hectic days.

Baum: Every one is financially solvent now, aren't they?

Downey: Oh, that's a tremendous advantage. Take for example the East Contra Costa district, I've represented many years. We have this problem. They have always gotten their water out of the San Joaquin River, a very, very valuable right and their records are perfect. Now Central Valley comes in and from now on

they don't get the water from the San Joaquin River, they get the water from the stored water from Shasta. Are they losing their rights or are they not? I have to see that they don't lose it. It's a problem. They are getting a substitute supply of stored water.

Baum: And they want it free.

Downey: Well, they have an appropriative right which is superior to any rights of Central Valley. That's one of our problems in connection with water rights on the Sacramento River. But are they being adversed, is the Central Valley taking away the water which they had from the San Joaquin River by a new source of supply? True, they give them a substitute supply, but are they getting a right to that? I guess it's impossible to go through life and not have our problems, whether they're reclamation districts or irrigation districts or just personal.

Baum: Some reclamation districts like the one you mentioned that was organized by the Armour interests to reclaim large areas of land...did you find that most of the reclamation districts were formed by a group of people who wanted to reclaim land or just by landholders

who were already there?

Downey: Of course, Armour, that was a vast real estate project of his and after he got it reclaimed he couldn't sell the land. Later they've sold a great deal of it. It was rather common for big landowners who were interested in the reclamation of big areas of land to organize a reclamation district. You take Reclamation District 1004 up near Colusa, originally a big group of landowners owned most of that land and then they formed the district and they controlled the board. I don't know, I suppose that control has passed now in reference to that particular district, but it was very common to do that.

It was common in the irrigation districts too. Take Merced. The Crocker-Huffman Land and Water Company, that was a big public utility, they certainly provided what was needed, promotion, to get this district organized.

Baum: Considering that it was large landowners or large real estate enterprises that started these things, perhaps there wouldn't have been such a great development of the Sacramento and San Joaquin

valleys if they'd left it to small landowners.

Downey: That's true. They had the organization and the know-how to organized these things and generally they put up money too. I don't know if Crocker-Huffman put up money on that or not, but the result was that after they got the district then the district bought their system and they made money on that. I don't say unfairly or that too much was paid. But they were ridding themselves of a very great problem in supplying these people with water and they got rid of their system which became the start of the Merced Irrigation District.

Refinancing Problems of Irrigation Districts and Reclamation Districts

Baum: There was a commission, the California Irrigation and Reclamation Financing and Refinancing Commission, established which studied the problems of irrigation and reclamation districts and issued a series of recommendations for new legislation in 1931. Fred Kiesel was one of the members.

Downey: He was the president of the California National Bank. He's dead now. He was a financial power until those banks busted in 1933.

Most of the work on that commission was done by Harmon Bonte. I know him quite well. He was the consultant for the California Irrigation and Reclamation Financing and Refinancing Commission. If there was legislation that grew out of this I don't know what that legislation was...well there's a lot of legislation through the years. We had one when I was with the Merced Irrigation District where we limited the assessments to what the land could pay. That's what some of my good friends called the "Downey law". The assessment would be approved by this commission and that it should not exceed the ability of the lands to pay. That was very bitterly fought by bondholders and gradually faded out of the picture because of the fact that the districts were ultimately refinanced, that is, Merced was.

Baum: Does this law still exist on the books?

Downey: No, I don't think so.

Baum: One of the recommendations of this commission was that the district be permitted to operate or lease delinquent lands that they had taken over.

Downey: I remember that legislation.

Baum: That's what your District 108 did was to take over the delinquent lands and operate them.

Downey: That's true. In the irrigation districts it was made so that the district could assign, as I remember, even the collector's deed. Some of those things were done at the request of the Reconstruction Finance Corporation which was loaning money to these districts.

There's similar legislation respecting reclamation districts. We take over the property when it's delinquent for a year, that's the reclamation district.

Baum: But then you operate it, or lease it?

Downey: Yes, we operate it. We get a deed after the period of redemption has expired and then that's our own, just like we did in 108 with those 8,000 acres of rice lands.

Baum: What happened to the lands before the district had the right to take the deed or operate it?

Downey: That was always a very difficult thing. The land would be delinquent, the taxes wouldn't be paid within the period of time of the legal limit.

During the period of time before the district was entitled to the deed you had the problem of getting the landowner out of possession. He'd frequently stay there. Then you had the question as to whether if you did get the land and farm it, all the proceeds would go to the bondholders. That presented a very difficult problem. In any event, so far as reclamation districts are concerned, they took a deed when the period of redemption, one year, had expired, that was their property. In irrigation districts it's three years for redemption.

Baum: And after that the original landowner has no claim to the land?

Downey: Not after the deed is made. First they assign collector's deeds, or they take collector's deeds in favor of the district. Later on (three years) they take a deed to the land itself and the redemption period is gone. In 1933 there was a statute passed prohibiting the trustees of a reclamation district from selling the lands they had acquired to anyone but the former owner. That was declared unconstitutional, I think.

Baum: Yes, That was a case you were involved in, wasn't

it?

Downey: Yes, that was one of those measures that was passed by the legislature to alleviate the troubles arising from the depression, to try to keep the original landowner in possession. That was one of the problems always, to keep the men there farming land and keeping it in production if possible. If not in production, farm lands go bad very rapidly.

Baum: I was wondering if you thought that was a fair thing to do to only permit the former owner to repurchase the land, or should it be sold to anyone?

Downey: I thought that was a fair thing. I was very much in favor of that legislation. You just couldn't help.. you know, your sympathies were with the landowner. On the other hand, the courts had to consider that the bondholders had rights and if the landowner could go right into possession and use the land, why, of course, the bondholder or the creditor wouldn't get the return. There was a lot of that legislation during the depression which just turned the rights of the bondholders upside down. Generally I was on that side and sometimes I prevailed and sometimes I didn't.

In the case you mention the law was held unconstitutional.

Baum: In most of the reclamation districts you've been in that had delinquent lands, when those were finally returned to private ownership did they go back to the former landowners or to somebody else?

Downey: Generally to the former landowners.

Baum: Was that a policy of the districts?

Downey: Well, they had the right to sell lands and very often, very commonly, they wanted to sell them to the original landowners. They wanted to keep the landowner right in possession of the property and sometimes they'd give him a break. Yes, generally that is right.

Baum: That they returned to the original landowner?

Downey: That required sometimes a little finesse.

Baum: Yes, I should imagine most of those landowners would be broke and unable to repurchase their land until they had something to work with.

Downey: Sometimes they got a little better terms. I don't know, looking back on the depression, (black as the war, I wouldn't go through a depression again if I

could help it), there were many things done, there was a lot of sharpshooting on behalf of the security holders, there was a lot of cutting corners on the part of the district. We all wanted the landowners to stay on the land. In fact, I always felt that nothing could be successfully worked out unless you kept the farmers on the land.

Baum: Were there any efforts, by members of the boards of trustees maybe, to get the lands themselves?

Downey: Not in any district I represented. I had occasion when I've had to say "You can't do that." Of course, they're disqualified to purchase land themselves, if they're one of the trustees of the district. There have been cases when I've had to say "You can't do it. By God, no, it ain't right."

AMERICAN RIVER FLOOD CONTROL DISTRICT ACT - 1927

Baum: You said you drafted the American River Flood Control District Act back in 1927.

Downey: 1927 or 1928. As I remember that, we had a big flood in North Sacramento. I think that was the flood of 1929, maybe 1928, right around in there. They had to do something about flood control in North Sacramento so we got a special act through the legislature, I handled that, organizing the American River Flood Control District which is still functioning, operated very successfully too. I still act for them. There's one thing in that act that's rather different, we have the zone method of assessments. That is, they adopted a plan common to all these districts and then they levied an assessment and then the assessment was spread by the assessors, again Etcheverry, by zones. There were certain reasons why that was necessary. The City of North Sacramento would take a certain percentage of the costs and some other area would take a portion of the costs. We had to go to the Supreme Court on that toget that approved. That was a very necessary improvement.

Generally speaking, we had the support of all the landowners except a few who didn't want to get into the district, didn't want to pay us assessments. They were excluded from the district, we kept them out. We issued bonds and sold them to the State Department of Finance. It was a good deal except they got too high a rate of interest. Did you know Al Heron, Director of Finance under Young. I worked with him. An able man. He's now with Schwabacher-Frey, I think, or maybe with Crown-Zellerbach. He ran a good bargain for the state, but we were desperate, we had to sell those bonds. That was during the depression and nobody would buy our bonds. We gave him 6%. I wish I could get some of those bonds now and I wish I had some money to buy them. They won't sell them now. They're a good bond. The City of Sacramento is one of the zones. Of course their credit is very, very high. When the depression came, and it was colossal, I knew these districts very well. I knew which ones would eventually pay out without any question and which were going to be temporarily embarrassed and which were going to take losses as the Merced District

did. But I had people offering bonds to me at prices that were just horrifying. They'd offer to sell their bonds without any interest or at 50% of the principal.

Baum: You were representing the districts?

Downey: I was representing the district. I couldn't do any of that work. It would have been the easiest thing in the world to make several fortunes if you had a few dollars to put down on bonds like that because now you can't get those bonds at anywhere near the rate stipulated in the bond or...you see, they're tax free. When I think of what was offered to me and the temptation I resisted. I might have been a millionaire. Well, anyway, I'm not. But that was just common.

Baum: Did you feel that you had to not purchase those bonds because you represented the district?

Downey: Well, I don't know whether I should have or not. I suppose I could have. There wasn't any reason why I shouldn't have the bonds in if I could at a cheap figure. It tended to peg the price anyway. I didn't feel I ought to deal in the securities of districts I was representing. Maybe I should have.

Baum: The trustees are not allowed to deal in the securities, are they?

Downey: I think they were in the same position. If they wanted to buy a bond I don't know why they couldn't, if they could get the bond cheap. They couldn't on the original sale of the bond, but after the sale had been made and the bond had passed into private ownership, I would certainly have advised them to keep away from it, but I don't know if it would have been unethical. Certainly it wouldn't have been illegal to buy a bond. But the one thing I did think about, I was fighting with the bondholders all that time and I didn't want them to think that I was trying to run down the value of their securities. Anyway, I didn't have very much money at that time. I didn't do it anyway.

CENTRAL CALIFORNIA IRRIGATION DISTRICT AND
TULE LAKE IRRIGATION DISTRICT

Baum: It must have been quite a little battle to get the Central California Irrigation District organized.

Downey: I must say, most of my important matters have been battles. That's one where I worked with C. Ray Robinson. Ray is the attorney in Merced who now represents the Merced Irrigation District. He and I worked together for a great many years. He's the man you read about a good deal in the papers, these big lawsuits against Miller and Lux. He does a lot of things, generally with big money.

Baum: This district was against Miller and Lux, wasn't it?

Downey: It really was. What we did, we wanted to take control of the public utility system that supplies water to people around Merced and Fresno and Stanislaus County. Of course, that was opposed by Miller and Lux and the people who controlled that corporation. That was rather a rich corporation.

Baum: Why did the landowners want to take control themselves?

Downey: They thought they could get the water much cheaper.

Baum: They thought the rates were too high?

Downey: They had many, many controversies before the Public Utilities Commission as to these rates. I had been more or less involved in some of these matters. I spoke to you about the San Joaquin Water Storage District where I represented the people who got water from that system. Nothing ever came of that.

Baum: Was this the same system? Was this a previous attempt...?

Downey: There was this system which was owned by Miller and Lux, at least at that time. They supplied this very large area of land, I think it was the biggest water public utility in the state at that time. If not the biggest, certainly one of the biggest. And it was wealthy. And there were innumerable controversies between the landowners under that system and the company. The San Joaquin Canal Company. Ray Robinson then carried on that fight for a great many years acting for the landowners under that system, the consumers. They had many fights. Ray is a good promoter and he conceived the idea of organizing a district and taking over the whole system by purchase from Miller and Lux. So he got me to help him on the organization of the district.

That was a fight. We organized an irrigation district, and then we included all the land in the irrigation district. We had to go through court, we went through the appellate court on that. Finally the organization was upheld.

Then Ray took over the matter of trying to make a deal with the company under which the company would sell the system to the district. He finally did, much to my surprise. I don't think anyone would have done it except Ray. He's a forceful fellow. He has a way of stampeding people. I think the district paid about four million dollars. Something like that.

Baum: That's right. $4,200,000.

Downey: The district paid that for the system and I think gave them bonds of the district. Since that time I've done nothing on that and I haven't seen Ray Robinson for some time, but I think the district is getting along very well.

Baum: I think that district was organized in 1951 and I understand the vote was by a very slim margin.

Downey: Yes, Miller and Lux fought it very, very hard.

Baum: I wondered what kind of propaganda you used and what kind they used.

Downey: We'd tell them they'd own that system and that again would be tax free, wouldn't have to pay taxes on the properties. They can operate the system much better than a lot of landowners who are more or less nonresident and don't care anything about the trouble they put to the dirt farmer. They said they were doing much better than we could ever do. There's a files of that stuff somewhere on the propaganda that was put out. That was a good job. I did do most of the work on the organization of the district, but Ray handled the rest of that.

Baum: Did you do mostly legal work, or did you get out...

Downey: No, I didn't do any of the propaganda work, except I advised. We had a publicity man I had to advise with on the paper articles and that sort of thing.

Mrs. Baum, these things seem so kind of trivial to me now, but they didn't at the time. Life was still quite an adventure to me at that time, law practice, though it's getting gradually more commonplace as I get older.

Baum: Can you tell me about the Tule Lake Irrigation District?

Downey: That's one I've almost forgotten about. All I did

there was form that district in 1951. I don't know how they're getting along, I think all right.

Well, that really was just one of those big reclamation projects and it was necessary, in order to get the thing on some kind of a businessbasis, to form an irrigation district.

Baum: Were there any problems involved?

Downey: I think there were a lot of them but I can't remember what they were now. Only technical problems.

SACRAMENTO PORT DISTRICT

Downey: There is one thing I omitted to tell you anything about. We have a district here to build a deep-water channel. We are in the process of building that channel now and it requires a lot of money from the federal government, it is dependent upon appropriations. It's a big public project. My son is doing all the work now. I just sit around here and take life easy.

Baum: You represent the Port District?

Downey: Yes. Right now we're condemning a great deal of land in order to build the project. I think the project was adopted by the federal government 79th Congress, Second Session. It goes back to 1947. Then the Korean War came up and they stopped the appropriation and they've resumed them now.

Baum: Have you had to go to Washington about that?

Downey: I talked it over with Tom Kuchel and Bill Knowland. I haven't made any trips to Washington myself on that. The Port executive has. He's gone back to Washington every now and then.

Baum: And are Knowland and Kuchel the ones who are pushing it in Washington?

Downey: Oh, very much, and John Moss, our Congressman. We have now a hearing on the budget. We've got two appropriations anyway.

Baum: You mentioned that you felt there wasn't enough industry here in Sacramento.

Downey: That's right. They make a survey to determine benefits to costs. We didn't have enough industry. So much of our industry now is in the military field. If they should shut down it wouldn't be very nice. So we have been rather pressed to get more industry here in order to build up that benefit. We're still trying to get them and we expect to. Those questions are infinitely complicated. Our rivers here are ideal sites for industry, which again brings up the problem of polluted water. They started to put a paper plant up at Red Bluff about a year ago and I represented the City and we had to fight that. We didn't want the water polluted. I fought the case through and they finally dropped it.

Baum: And they're not polluting the water now?

Downey: No. There's no industry here to speak of. But

it may break anytime. One of the men at the Water Pollution Board told me the other day that the thing may break like a bomb with all kinds of industry.

Baum: Why do you want a deep-water port here?

Downey: It certainly would be very helpful in the rates. We could get terminal rates for one thing which were taken away from us recently. It would undoubtedly be of tremendous benefit to have a big port here.

Baum: Do you think that would bring industry here?

Downey: It would bring industry. There are so many values that come from a port. The Stanford Research Department made a study of this thing a while ago. That was at the request of the Stockton Port. They didn't want us to have a port here. They have a port of their own which is just now beginning to work. I don't think the research report was just what we wanted but it hasn't hurt us in Congress yet although it was circulated back there with a view of stopping our appropriation. But a port here, a deep-water channel, would be a shot in the

arm here, to all Northern California, all the counties.

Baum: And you think the advantages would exceed the cost of building this thing?

Downey: Well, the report of the Army Engineers showed that the benefits would exceed the cost, but the ratio is not as big as we thought it should be. We can change that by getting more industries here.

Baum: Congress wants you to get the industry first, I suppose, and you may have to get the industry afterward.

Downey: Well yes.

COMMENTS ON THE CALIFORNIA WATER DEPARTMENT

Baum: Do you think the Division of Water Resources has done as much toward the development of water in California as they might have, or should have?

Downey: I think so. That's all taken over now by the new, reorganized Water Department.

Baum: I understand that you were proposed as head of that new Water Department.

Downey: If I was I didn't know it. Nothing very serious. No, I wouldn't have been competent to do that work. That requires an engineer.

Baum: That's Harvey Banks.

Downey: He's an able man.

Baum: You weren't seriously considering the position?

Downey: No. I wasn't. I couldn't have accepted it. It's not a lawyer's job. Harvey's got a terrific prolem there. He's a good man, and a young man, a man with great energy, and an ambitious man. A good engineer surrounded by good engineers. But he's got a problem nevertheless.

Baum: Perhaps it requires an attorney more than an engineer.

Downey: Well, one of my friends from SMUD wanted that position. At least he said he would take it if it was offered to him. He had many qualities that he could have used very well there. He had the political point of view and it requires a politician too, but I think Harvey was the right choice for that.

Baum: Is Harvey Banks a politician as well as an engineer?

Downey: No, but he understands public relations.

Baum: He would have to. And is he somewhat of an attorney on his own?

Downey: Well, they get to be pretty good attorneys on water law. There are several men who work with him who are very, very good.

Baum: What about the past? Do you think in the past the State Engineers have been aggressive enough about having the state set the policy?

Downey: Well, I never knew W.F. McClure, except to speak to. I was very close to Ed Hyatt, both as the State Engineer and as a friend. I was very fond of him. He was a man of great tact, he did a good

job. Paul Bailey came in there. I knew him quite well. He did a good job. I think they've had good State Engineers. Then came Edmonston. Edmonston I was also very fond of. Edmonston could be very blunt at times, but I think he did good work too, although the pressure of that work bore down on him a good deal. He'd had some injuries earlier in life. I haven't seen him for some time. He has been sick.

No, I would say that Hyatt and Edmonston and to a lesser degree Paul Bailey, I don't think he was there too long, I knew all those men intimately and they did fine work. I don't think anybody can do perfect work with all the problems and they're getting bigger and bigger. Harvey's just inheriting a lot of problems. I think as far as he's concerned the story is just being written.

One thing has been talked about a lot here in the last few years is the state taking over the Central Valley Project. That was undoubtedly very strongly favored by the Irrigation Districts

Association, some of the people who were key figures there. The P.G. & E. wanted it. All the people who were opposed to the 160-acre limitation wanted it. Personally, I couldn't ever see how it would be possible to do that, the expense was tremendous. As long as the federal government is financing it and it is necessary that somebody does, I couldn't believe in the state taking it over. Warren agreed with me. I know that because I discussed it with him.

Baum: Warren didn't take any special part in that state take-over...

Downey: He did as he did in all matters. He was interested in getting such information as he could. He attended some of the hearings in Washington when the matter was discussed. I don't think anybody is thinking about that now. I know Clair Engle isn't. He's the head of the Insular Affairs Committee in the House of Representatives.

Baum: Did Clair Engle favor state take-over?

Downey: I'm sure he didn't. I've worked with Clair for many years. I'm very fond of Clair. He's an

able man and of course, continuing to be chairman of the Insular Affairs Committee, he's a power.

SACRAMENTO RIVER WATER RIGHTS

Baum: I had a few questions on Sacramento River water rights.

Downey: There was a subcommittee of the Irrigation Committee of Congress, that's Clair Engle. He's now chairman of the Insular Affairs, that's the irrigation committee of the House of Representatives. He's a very able man. He had a hearing out here of this committee. The principal purpose of that was to investigate the action that had been brought by the United States on the Santa Margarita River in Southern California. They brought a suit there to determine their water rights. At that time the Reclamation Bureau was just about to commence a suit to determine the water rights on the Sacramento and American rivers, which would have been a colossal undertaking. When they brought that suit on the Santa Margarita River in the South it stirred up all kinds of feeling. Those cases are very technical and very difficult.

So this committee of Congress came out to investigate that and then they held a hearing here to see what they were going to do on the Sacramento

River. That's the Reclamation Bureau, and everybody realized that some of that stored water from Central Valley has to be used because there isn't enough of the natural flow. To determine what would have to be provided by the Reclamation Bureau and to what land required a determination of all the rights on the river. Of course the Santa Margarita River in the South is just peanuts compared to the Sacramento River.

This is the report of Engle's committee. I'm giving you their own language here. They say that if the Reclamation Bureau brings a suit it will be a "monstrous lawsuit" and shouldn't be done. You might be interested in this report. I've marked several spots. During the course of my testimony I said that, "25% of the large diverters on the Sacramento River control 90% of the water above Sacramento and they are reclamation districts or big agencies representing thousands of other owners or diverters. We think an effort should be made to see if we can't work out something above Sacramento; that is to say, we want to see if we can't work this out by agreement. I would like to sit down, Mr. McDonough, my collegue,

and I and Mr. Hyatt, the ex-State Engineer, and work that out by agreement."

Well, it hasn't been worked out yet and that was several years ago. But we have done a lot of constructive work on it. We've worked in cooperation with the state, that was Bob Edmondston and now is Harvey Banks, who is the Director of Water, and with the Reclamation Bureau, and our organization, the Sacramento River Water Association.

What we've done among other things, we first had trial runs of the water from the Sacramento River to determine how much of that water each of these landowners up and down the valley required. That was quite an undertaking. Then we employed engineers and they recently rendered a report on how much water we have a legal right to, how much stored water we need to firm up our supply by storage and how much we think we can get, what we think we'll have to pay for it, how much water is needed for salinity control, and finally, what are we going to do about it. We have to negotiate with the Reclamation Bureau about that. Whether we're going to get anywhere on that I don't know. But I think so.

But you can see how difficult that is. Here's the report by our engineers. It's just like a problem in higher mathematics. I can't even read it and understand it without sitting down and really concentrating hard.

Baum: This report is by the Sacramento River and Delta Water Association.

Downey: Yes, that's the name of the association.

Baum: Weren't there two associations, the Sacramento River Water Association and the Delta Association?

Downey: There's this association which is concerned with the water rights on the river and there's another association which I also represent that is concerned with the flood control, that's another name. And there's still a third association...

Baum: Is that the California Central Valleys Flood Control Association?

Downey: Yes, that's the one I've been working with Knowland on.

There are a lot of other groups that have joined us. This is the controlling group on the water end of it. We had quite a number of landowners, largely from up the river, who were working with us but finally

decided they'd withdraw because they felt they could work it out better themselves. They're out of it now, but they're trying to work out their own problems.

About all I could say about this is that there's a lot of work yet to be done to determine how much water we need to firm up our supply on the Sacramento River and the price. Eventually I would hope we'll get an agreement with the Reclamation Bureau but that's still in the distant future. All I can say about this job at the present time is that we have done a tremendous amount of constructive work. We have data now which couldn't have been obtained in a lawsuit without months and months of proceedings in court.

We entered into an agreement right after we had this meeting with Engle. Parties to the "memorandum agreement" were Governor Warren, Ed Hyatt, who was working with us at that time, he was then retired as State Engineer, the Bureau of Reclamation, the Attorney-General, possibly some others, in which we set forth what we hoped to do. We're having a little trouble now as to whether the new Reclamation Bureau under Eisenhower is willing to conform to everything

that the old Reclamation Bureau set forth in that memorandum.

Martin McDonough is working with me on that, doing his usual good work.

Baum: Do you expect this Upper Sacramento Valley Water Association that withdrew to enter the contest in competition with the lower Sacramento?

Downey: Well, they don't always agree with the lower users of water on what we call the Delta. They think they are entitled to most of the water in the river and the Delta people think they are entitled to much of the river because they are riparian landowners and big users. The upper-river people are at present pretty much dominated by a man who is very partisan about these matters. He worked with us, but he has his own ideas about things and he prefers to work by himself. And he knows how to do things very well.

Baum: Who's that?

Downey: Charlie Lambert. He's a man who's been quite influential up in the upper valley. He's not too well, I think he's having some sickness. His son is working

there. He's an engineer.

Mrs. Baum, I don't know. I was the man who said to the committee, "I think we can work this out. We'd like to." They took me at my word, as you'll see when you read this report. But I may be long buried before this thing is settled, if it ever is settled.

It involves the problems of salinity control too. You see, a certain amount of water, I think roughly about 4,000 second-feet, has to go down for salinity control and we always had assumed, and I think that's in our "memorandum agreement," that the United States will pay for salinity control. We have to figure this out, both on the theory that we may have to pay for that salinity control or we may not.

Baum: Isn't much of the land that's being watered rice land? Rice takes a lot of water.

Downey: A great deal of it is rice land up above. However, there is a lot of use of water upon rice land, but on the other hand there's a lot of return flow too. You take up on 108, their use of water is colossal, they're one of the rice-growing districts. But

much of that water gets back to the river. Their return flow is tremendous. But in the end we have to base all this on reasonable beneficial use. Some of those uses are undoubtedly beyond all reason, on the rice lands.

Baum: That's what I was going to ask you. Did you think that you would be able to get enough water to continue these lands in their present uses or might there have to be a readjustment of use?

Downey: No, we were figuring generally on their present uses. So far as all of our members are concerned, we've determined what they need.

Baum: But do you think they can get it?

Downey: That's the question. Of course they can get it, at a price, from Shasta. Of course, much of that water at Shasta has been committed already.

Baum: So you're really in competition for the water, aside from the price, aren't you?

Downey: Yes, in competition, although we contend that we have certain rights there. You and I have never talked about the counties-of-origin water and the areas-of-deficiencies and so forth, but we have also

made a very strong showing that when the Sacramento Valley voted for the Central Valley Project it was represented to them, and we have it from no less an authority than Secretary Krug, who was then the Secretary of Interior, that they were not going to take one bit of water away from us until all our rights had been satisfied, only the surplus. How much that's worth legally, I don't know.

Baum: I've heard it prophesied that eventually all water will have to be allocated throughout the whole state on the basis of beneficial use and that that will mean a readjustment of agricultural production.

Downey: That could be true. There was a suit brought a great many years ago by the City of Antioch (1920) to prevent so much of the water being taken out high up for rice. It was contended in that case that they had to even stop rice growing. The Supreme Court never passed on that except to say that it might be a matter to be considered sometime by the Legislature. But rice growing now is certainly one of our most important industries, no question about that, but it does pose problems. Water is the atomic bomb.

COMMENTS ON THE LEGAL PROFESSION

State Bar Examination

Baum: Would you like to get into the legal profession questions now?

Downey: You can start on them. I would be as much interested in my answers as you are.

Baum: We can start with your bar examination when you came to California.

Downey: I didn't have to pass it, fortunately. I graduated from the University of Michigan and that admitted me to the Michigan bar and the admission to the Michigan bar admitted me here. They don't do that anymore. They have one examination for attorneys from other states and one for the person being admitted for the first time. Many people who have practiced law in other states don't do the necessary studying for the bar exam and they fail and that hurts them. But, I think it's a good rule that they should be required to pass the examination of the state.

Baum: Do you think the bar exam should be very difficult?

Downey: Well, they are difficult. I don't know that they're

too difficult. I wouldn't want to try to pass one right now. There was a good deal of discussion many years ago as to whether we should require any bar examination. Chief Justice Beatty who was on the State Supreme Court, some years ago, took the position it is said, that anyone who wanted to practice law should have the right to without any examination, without anything.

Baum: Without even a diploma?

Downey: No, he thought not. That's all changed now and I think in the main it's been for the better. There have been occasionally men I think who should have been admitted but weren't because they couldn't pass the examination. But if they want to pass they can take the examination again. All of the people I've been particularly interested in have always passed the examination.

No, I think it's been a good thing. There were a number of attorneys a good many years ago who didn't know anything about law. When you go in to a lawyer you want somebody to have at least some knowledge of the fundamentals.

Baum: Do you think there's an advantage to cutting down the competition, or the number of attorneys?

Downey: I don't like that. Competition of course is pretty heavy. But I'm not worried about it. Right here in Sacramento the number of lawyers is increasing all the time. And they are very good lawyers. They show the training they've had. Many of them are very strong competitors. They don't bother you particularly, nevertheless, they are able men. They are young, you see. They have ability and energy.

Baum: Then you don't think the difficult bar exam has cut down competition?

Downey: Not for the older people, no, I don't.

Baum: There's still plenty of competition.

Downey: I don't know whether from an overall point of view more men ought to go into science and engineering like they are doing in Russia. Certainly all the young men I know here are very fine, outstanding men. There are a great many in the state departments, attorney-general's office. There are so many of them here I don't know all of them. I'm rather ashamed of myself. It used to be I'd know every lawyer here and know them by their first name.

The State Bar

Baum: Do you do much with the local bar association here?

Downey: No, very little.

Baum: Have you ever been active in bar association work?

Downey: Well, going back a number of years, there was a very informal organization here. It's becoming a big organization now. I have served on some of those committees, but I don't even know what they were. The State Bar, of course, is becoming stronger all the time.

Baum: Did you work, during the 1920's, when the State Bar was trying to get established.

Downey: No, I didn't work on that. I think I was a little indifferent to it at that time. I have to admit, now the State Bar has done a lot of good.

Baum: You are on a State Bar committee now?

Downey: Yes, the Committee on Procedural Reform. We are charged with getting certain constitutional amendments through the legislature. It's been approved by the State Bar, our report, and undoubtedly will appear in the legislature.

I was the chairman of a committee of the State Bar a short time ago and the committee was to discuss recent epochal decisions of the Supreme Court at our meeting at Yosemite. That was after Roosevelt had come in and the personnel of the Court had changed and there were many epochal decisions. Being the chairman, I selected as members of my committee the heads of the law department at California, and Stanford and Hastings and one somewhere else. All were outstanding men. Then I asked them to prepare papers on these decisions. We had quite a meeting of it. I, being the presiding officer, started it off with some article that had just been written by Roosevelt himself on what the Supreme Court had been doing and then they came in with all their comments. Sometimes it's an advantage to be chairman of a committee, you just choose whom you want. It's an easy ride.

Baum: Have you been particularly interested in any of the problems of the State Bar?

Downey: Very little. Many lawyers put in a great deal of time on that. They make a campaign to be elected to the Board of Governors and they look forward to

being president of the State Bar. I wasn't particularly interested in that sort of work.

Baum: One of the things the bar was working on before there was a State Bar was a bill to prevent the practice of law by non-lawyers. That was in 1921. Were you active in that work?

Downey: No. In fact, I wasn't interested in that sort of thing. I thought you'd get the work all right if you did good work. But there was a lot of feeling about that. I thought the feeling was somewhat exaggerated.

Baum: You didn't feel it was a very serious problem?

Downey: No, I didn't. Although they have accomplished something, undoubtedly. Your banks and trust companies, they are very careful what they do, title companies too. I liked the help I got from those people before they got to the point they couldn't give it. Undoubtedly the bar did some good, although I wasn't interested.

Loyalty Oath for Attorneys

Baum: I want to ask you what you think of the requirement

of young attorneys to answer whether they have ever been a member of the Communist Party or not?

Downey: Of course, I don't like McCarthy, I don't like his witch hunting. Sheridan would argue with me that the country was being overrun with people who have been Communists and are Communists. Of course, they're dangerous, but I've always felt that if a man had been a member of a Communist cell and wasn't any longer a member, we shouldn't inquire into his past as a rule any more than they inquire into my past, except you. I don't like it. I suppose they have a right to ask that question of an attorney. If he's going to be an attorney he's going to be required lots of times to act in matters he may have already been a Communist with respect to. I attended a recent installation of a Superior Court judge and they read that new state oath that they have to take.

Baum: Isn't the regular oath that you agree to do the duties of your office and to uphold the Constitution?

Downey: Well, that's what it ought to be, to pledge allegiance to the Constitution of the United States and to the State of California, but this went much further. We

have to have those oaths taken by all of the members of the boards of directors of the various agencies and it startles you...I think I'm talking about English more than anything else, it seems so unnecessary to repeat the thing over and over again like I am doing here.

It took the man swearing in the judge that day, it seems to me, a couple of minutes or more just to read that oath. I don't think there's anything wrong about it.

Ethical Problems

Baum: What do you consider reprehensible ethical practices?

Downey: That's a big question. Some of them are very, very reprehensible. We had a case here not so long ago where some lawyer made a friend of an old man and then got the man to will all of his property to him. He did it very, very cleverly. The will was set aside and the lawyer was disbarred and was sent to the penitentiary. Those are just acts of a criminal, you know. There are such cases as that, but I think they are rather exceptional.

There are some lawyers who violate confidential relations of a lawyer. They will take cases where there are conflicts. I don't think there are many of them.

Certainly some lawyers overcharge which is unethical. Some of them will take trust money that comes and deposit it in their own account, which is unethical. All those things, of course, are frowned on by the bar. There's always a shading in all these things. I had an old woman come to me the other day, she's about 90 years old. She wanted me to make a will. I said, "How do you want your property to go." She said, "I want to leave it to you." I said, "Why, I couldn't do anything like that." She was offended about it. "Why, you're my friend. I look up to you." I couldn't and wouldn't do it, of course, but it just shows how sometimes these things are put up to you. I can see how people would have thought they ought to do it, it wouldn't be right to turn her down. I think sometimes where they do that they aren't doing it maliciously or willfully, there is generally

some reason why they do it.

I would think perhaps, if you're making a blanket indictment, I know some charges are too high. Probably some of mine are too. Generally when I charge, it's a man of wealth well able to bear it. It's the little man who doesn't have the means, to do these things you feel is taken advantage of.

Baum: How serious a breach do you think solicitation of business is?

Downey: I don't like it. Yet again, that's one of those things where you have a hard time drawing the line between what's right and what's wrong. There are many, many people who go on boards of directors expecting to get the legal business that comes, not directly solicited, but they think it will come to them if they're on the board. There's quite a lot of solicitation. The man who solicits the business, he won't be caught. You take solicitation of the job of receiver for some big corporation, nobody is going to know about that. He won't out and out apply

for the business, nevertheless, by indirect process he succeeds in getting that.

Solicitation of business is commonly thought of as the solicitation for automobile cases or cases of that kind. That is very common now, very, very common. There are a number of lawyers I know who have their own runners-up.

Baum: Do you think that's serious?

Downey: Well, it's certainly not what is contemplated. I will say this though, most of those men are very skilful personal injury lawyers. I know one who has his own car and his own man and if a report comes through of an accident his man is out there signing up the witnesses and signing up the people who have been injured. He's probably more vigorous about that than most people.

I had a woman, her husband had been killed on one of the railroads, what you would call a good case, she asked me to go out to the hospital. I did. She said, "We want you to take this case." I told her I would. A little later on another lawyer came out to

the hospital. He began telling her what a wonderful lawyer he was. And he was too, he had very outstanding men who do that sort of thing, witnesses and so on. He wanted her to sign this contract. She said, "Steve Downey is representing me." That shocked him because I was quite a friend of his. He immediately called me on the phone and said, "I'm awfully sorry about this. I didn't know you were in the case."

But there's a lot of that now and I suppose from a wholesale point of view that is probably the cardinal injury that is done. Sometimes those people overcharge. They are very commercial about it. They want their half. They will provide the witnesses. Certainly something should be done about that.

Baum: Well, that is cause for disbarment, isn't it?

Downey: Yes, if they can prove it. They've had two or three cases. That can be very bad, where you've got the number of personal injuries that come from the automobile now.

Baum: I think some attorneys don't feel that's so bad, because the insurance companies are there on the

scene trying to get the person to settle right away.

Downey: There's some truth in that too. Certainly most of these men I know of who do that thing are able men and I think they are very good trial lawyers. They do get pretty avaricious sometimes, but I think as a rule they know their case. I think sometimes they overcharge. You hate to see a lawyer trying to tear his client to pieces to get more money out of him. I would say that's the most unethical thing on a big scale, that affects a lot of men.

Baum: What would you regard as unfair trial tactics?

Downey: In any jury case, there can be a lot of unfair things done in the courtroom, if the judge will let you get by with them. I think all of us try to do that to a certain extent.

I wouldn't call it unfair, although sometimes it could be. You might attempt to get before the jury some thing that you have no right to get before them, more often the subtle suggestions you may make. Generally you can't get by the judge on those things. He'll cut you off.

There are a lot of other things that are done in court that are unfair, undoubtedly, and reprehensible too, I haven't encountered much of that.

Baum: I suppose it's before juries that most of this goes on.

Downey: Largely.

Baum: What judicial ethics do you think are most important?

Downey: Well, to decide a case in my favor. (laughter) I've never known...I can't say that, I have known of judges who have been charged with not only violation of judicial ethics, but actually...one judge on the Supreme Court was forced out of office under Johnson, he was a crook, he took money. Of course, there's no argument about that, that's going too far.

I think one of your questions was should the bar have the right to investigate the judiciary.

Baum: To discipline the judges.

Downey: No, I don't think they should. My contact with the judiciary here, they're all been very outstanding men. We have a fine bench here, and a fine bench in Northern California. San Francisco, I've heard things about them, some of the judges there, that don't sound complimentary, but in so far as I've come

in contact with them, they've been all right. Certainly the higher courts have been very fine, as far as I know.

Baum: Then you feel that there would be no need to discipline them?

Downey: No, I don't think so. You've either got to see that they're disciplined by not being reelected if they come up for reelection, or you've got to recall them. But I think that's got to be left in the hands of the electorate or the appointing power.

Appointment of Judges

Baum: Do you think judges should be elected or appointed?

Downey: I would say the superior judges ought to be elected. The method in the appellate courts is a good method now. When their term is up it goes on the ballot, "Shall so-and-so be retained?" I think it's all right. I was discussing this with Chief Justice Gibson the other day and I think he would incline toward the appointment of all judges. And he's a good man too, a very good man.

Baum: Do you think the bar ought to have any part in con-

firming the nomination of a candidate for the bench?

Downey: No, I do not think so. There is this committee that passes on judicial qualifications, I see no objection to that.

Baum: I think the criticism is that the nomination actually has almost been made and it is very hard for the committee to say "No" at that point.

Downey: That happened on the appointment of Max Radin to the Supreme Court by Olson. I recommended him to Olson, by the way. A very fine man. A little bit woosey, like some of the rest of us are probably, but a good man, an honest man. And the qualifications committee finally turned him down and that killed that appointment.

Baum: As I understand it, Attorney General Earl Warren was the one who turned him down.

Downey: I wouldn't be surprised. I never talked to Earl about that. I don't disagree with him in many respects.

Baum: I was going to ask you if you agreed with Warren on that point.

Downey: Well, I wouldn't have turned down Radin, but of course

I knew Radin. I liked him very much. As I say, he was a little bit wobbley in some of his philosophy, but no more than I am. No, I never even mentioned it to Warren, but I did recommend Radin to Olson.

Baum: What did you think of Olson's other appointments?

Downey: All of the appointments that I knew anything about I thought were good. Phil Gibson, now our Chief Justice. Right here in this country...some of the men I recommended. Ray Coughlin on the Superior Bench makes an excellent judge. I recommended a number of them here locally. Paul Peek on the appellette court, an excellent man.

Baum: He was one of the ones there was some controversy about.

Downey: Yes, he hadn't done a lot of practicing, but he makes an excellent judge.

Baum: You recommended Paul Peek?

Downey: I recommended him. And I recommended Annette Adams, who was a very good justice. There was a lot of prejudice against her because she was a woman. A very fine woman.

There were a number of appointments he made which I thought were very good appointments. Culbert, he had faults, but I think his appointments, as far as I knew, were good. He may have made some that weren't good.

Baum: Did you approve of Warren's appointments?

Downey: Always. Of course, I was prejudiced in favor of Warren.

Baum: You probably helped recommend appointees.

Downey: I have spoken to him a number of times. I'm sure anybody I recommended was good.

Baum: What kind of qualifications do you look for when you recommend a man as an appointee to the bench?

Downey: Well, depending on the appointment. If you're recommending a man to the Supreme Court, you want a man who can write an opinion and a man who has a rather clear conception of the law. If it's a man for some administrative office, it's a horse of a different color. It depends on what it is. I think undoubtedly in some of these appointments you have personal feelings in connection with them. If you

know a man and like him, you are more inclined to recommend him. It would be awfully hard for me, if a man came to me and asked me to recommend him and I knew him and liked him, for me to say "No." That came up again and again with Sheridan's appointees.

Trials

Baum: Here was a question I thought you might want to think about. Can you state any general principles for the successful prosecution of a water right case?

Downey: I've been thinking over some of the questions you sent. Generally speaking, the trial of any case, whether it's a water case or any case, I think involves much the same problems. Take a jury case, for example. A jury case, if properly tried, is like a work of art. You've got twelve men there and you've got to be pulling with them all the time. You have to make friends with them. You have to convince them of your sincerity. Now, the trial of a court case is different. There's the judge and he's primarily interested in legal problems. The jury is interested in factual problems. Both, however, can be swayed

by emotion. The coldest judges canbe influenced by prejudice, whatever it may be.

Now, in a water right case, if it's a case involving a trial before a jury--most of them are not--but take the riparian right cases we used to have---We don't have so many of them now---where some man is attempting to recover the value of his riparian land which he claims was taken from him. That is very much like any jury case. I think I told you about one of those cases I tried at Merced and I handled the jury and a juror said, "By God, no, it ain't right." That was just exactly a jury reaction. Or it might have been the other way.

I would think those cases were very much like any other, even a criminal case, where some man is charged with a crime and where emotion and prejudice and all those things enter into it.

Baum: How do you go about preparing for a case like that?

Downey: There's always a certain amount of close preparation required in a water case. Take a riparian right case, to determine whether the land is riparian, to deter-

mine what the damage is, if any, that had been done by the taking of it. It does require rather careful preparation on the engineering. I would think that for some of these water cases, they are really like working out a mathematical formula. Right now Martin is doing this on the hearings on the American River before the new State Water Rights Board, trying to determine what people are entitled to permits on the American River. That's just plain, hard, engineering and mathematical work. It's almost impossible for me to sit through those hearings, they are so prosey. Martin loves that, and he does a wonderful job too.

I think if I were going to continue with all the water work that might come before me I'd take up engineering to get the background. Some of these things come naturally to some people. I try to keep away from as much of that as I can.

Baum: There must be a lot of difference between trying a case before a jury and trying a case before a water-rights board or something like that.

Downey: Oh yes. A man who can try a jury trial, that's the height of artistry, I believe. There are twelve men, they come into the courtroom and you've got to get them on your side before you get through, but do it by having them believe in your sincerity. That's very different from a court case.

Baum: In a jury trial like that, how much depends on your artistry, as you say, and how much on preparation of your case?

Downey: Other people may differ on this. I think it's the atmosphere you create. If you create an atmosphere in the courtroom that the jury thinks you are entitled to some relief. That same thing is true of a personal injury case. You get in an automobile collision with some other car, everybody's seen it and willing to testify and is excited about it, the jury instinctively may side with one or the other. You've got to get them to see your case.

Well, in a water case like the Collier case down in Merced, that's a little different again. Here's a great public enterprise and they've taken

the water. The landowner claims they've taken his water and ruined his ranch. You can see the conflicting play of human emotion on a thing like that. In this particular case they thought "No," they can't try to make the district pay a million dollars.

Baum: I should think most of the people would have been on your side to begin with in that case.

Downey: Well, I think they were. I was asking the court to adopt a rule of law that would be practically the same as the constitutional amendment which was subsequently adopted. I couldn't find any authority for it. I had a very able opponent and he kept challenging me, "You say this is the law, show me any authority." The judge kept asking me. He wanted to hold with me on that, whether he would admit this evidence or not. That went along for several days with very emphatic arguments on both sides. Finally the judge said to me, "Mr. Downey, haven't you got a law to support what you're claiming here?" I quoted Rufus Choate, a great lawyer, who said "I don't know if there is a law or not, I've tried unsuccessfully

to find one, but if there isn't one, Your Honor might well be proud to be the first to declare so just a rule of law." And that got him, it really got him. He ruled with me on that point and that won the case, at least so far as getting the facts before the jury that I wanted. So there are all kinds of things, you know, that enter into it.

Baum: Can you state any principles for negotiation outside of court?

Downey: Of course, I have my own views of that. If I can win a case, that's one thing, and then I have to try to convince the other attorney that he's going to lose the case and then try to make some deal with him. Maybe I'll make some concession in order to get him to agree. But very often attorneys don't know their cases and that always bothers you, where you know that you can establish your case, that you've got a case, but the other side doesn't examine into the case enough to know what their rights, or at least your rights, are, you don't get anywhere.

Baum: You mean that you have to be pretty sure that you can win?

Downey: That's right. Now, if I think that notwithstanding everything else, I may lose, then I take an entirely different point of view. Well, I'd better make a settlement here now and if I don't settle this case I'll lose and there'll be some judgment against me or my client. So then I work from that end and I start hoping I'll work out a settlement and being willing to make concessions to bring about a settlement.

Of course, this pre-trial procedure, it is hoped will bring about more settlements and thereby relieve some of the congestion of the courts. There's a good deal of sense behind that. If both sides know their cases you can generally make the attorney who doesn't have the stronger side realize that he'll have to make some concession just to avoid litigation. Litigation costs money. This pre-trial work is recommended now, and we're going to follow it to the greatest extent we can. That has a tendency in being very, very helpful in working out negotiations. The pre-trial is just now really being tried

on any outstanding scale. Of course, they've had it in the federal court for years.

Baum: Then you start the pre-trial work and in establishing your case in the pre-trial you have the basis for outside negotiations.

Downey: Very frequently, if the pre-trial is properly presented. As I believe pre-trial should be conducted a man knows all about his case before he goes to court, the purpose is to find out how many of these things he contends for are admitted on the other side and how many are denied. How many can be admitted under legal sanction and how many can't.

I've got a case now, a very important case, coming up shortly. If I can get the other counsel, there are eight or nine on the other side, to really work on that case and analyze what the proof is and willing to admit what I can clearly prove in the way of the record, we should work out a settlement in that case. Some of those attorneys on the other side don't want to do that. They'd rather wait until they get to trial.

Baum: It sounds like in some of these cases the attorneys

haven't worked through the case before they start in the courts.

Downey: Well, attorneys frequently don't do that. They don't really know what their case is until they get called into the courtroom. They may or they may not. Even then a good many of them will blunder through the case. As far as I'm concerned, the only thing I was ever able to do and to really accomplish results was to really know my case, all the facts, both sides, the other side and your side too. If all attorneys would do that it certainly would be very, very helpful in the way of getting rid of many of these cases.

Baum: Would that be called unethical conduct, to not have prepared your case?

Downey: No, I wouldn't call it unethical conduct. Some of it is due to laziness, some to not being willing to face an issue, some of it lack of time. No, I don't think that's unethical. A great many attorneys do not prepare their case as they should. Probably I don't either, but I think I do. I think I know my facts before I go to court. That means knowing the facts against you as well as the facts for you.

Stephen W. Downey's Most Significant Cases

Baum: Here is another difficult question. Which do you consider your most significant cases?

Downey: I've thought a good deal about that. There are a great many cases I have handled which certainly were important cases...a great many cases I handled in the higher courts which involved important legal propositions.

I want to give that a little more thought. I'll drop you a note about that. I would say for one, I'd pick out the SMUD revaluation case. That was important and it's never been duplicated. It involved very important factual questions, it involved very important questions of valuation, and it involved very many legal propositions. When I say that case, I refer not only to the proceedings before the Public Utility Commission, but also the proceedings in court.

There are several Reclamation Board cases that were essential to the flood-control relief from over assessment, and they involved important legal questions before the Supreme Court.

Several of those Merced cases. Take the case where we sued the San Joaquin Light and Power Company for the payment of the power down there.

There was one insurance case, representing the California Western States Life Insurance Company where we sued, practically the winning of that case for about a million dollars rehabilitated that company. It was in bad shape at that time.

Let me think that over.

(Mr. Downey later sent a letter outlining the three cases he felt were most significant. His letter is included in the appendix.)

Office Organization of Downey, Brand, Seymour, and Rohwer.

Baum: You told how you brought other partners into the firm after John Pullen and your brother left. Did each partner specialize in a certain kind of work?

Downey: No, I wouldn't say that, but all have high capacity for doing certain things. Mr. Brand, Clyde, we're not particularly interested in the same things, in the law. Clyde likes the business end of law. He's director in several corporations. I'm not director in any corporation. He's one of the directors of the Crocker-Anglo Bank and a director of Natomas and director of some other rather large corporations including California Western States Life Insurance. That sort of work doesn't appeal to me. He likes business problems. I would say that he likes business better than he likes law and he's good at it. He understands the legal end of things that grow out of business and he just naturally follows that line of work and does it well. It's not interesting to

to me, I kind of like this work that involves some quasi-public organization, some district. I like that and do that.

My son has come into the firm in the last few years and he kind of likes the same work I like, so I shove my work off on him as much as I can. Mr. Seymour likes the corporate work and estate work. He is a very able lawyer.

We don't intentionally specialize in anything, but we like different kinds of work and just naturally gravitate to them. Our other partner, Mr. Rohwer, is a natural business-getter. He likes to get business and he does.

I suppose I'm as near to a general specialization as anybody here and I'm trying now to get away from that to some degree. You specialize on water and it can drive you crazy because there's so much of it. That wasn't true a few years ago, but it's certainly true now.

Baum: When some work comes in, does it come in to your firm or does it come in to an individual attorney in the firm?

Downey: Of course, if it's a water matter or a matter involving some of these districts, it generally comes to me. I may have to get some of the assistants in the office to take of that, to help me. If it's a matter not involving water, it might be say probate, Mr. Brand loves that, and he has quite a number of people who come to him on those matters. That come to him often. Occasionally he'll call on me or I'll call on him or on Mr. Seymour or Mr. Rohwer or on my son. Some of these big firms, just how they work these things. I've often wondered. Sometimes I get work I don't want to handle and I hate to call anybody else in to do it unless they are one of the assistants. They do have managers in some of these offices, but I don't know how it works.

Baum: Do most firms handle a variety of work or do some firms specialize?

Downey: Oh, I think so. You take the big firms in San Francisco, they have an all-around practice. Sometimes they'll come to me on some matters and sometimes I'll go to them. But they have a rather general

practice. There are a number of men who specialize in tax work in all the big firms.

We have a man on that, a certified public accountant and a lawyer. That requires a very high degree of specialization. He's one of our assistants. Very good man. But we first employed him because we wanted a man in the office here who could handle tax problems. He was both a certified public accountant and he had passed his bar examination. He comes in the office just as one of the lawyers. Undoubtedly he will be a member of the firm. That's generally true, I hope, of a number of the other lawyers working here in the office.

Baum: Do you employ engineers in your work?

Downey: Oh, very often.

Baum: Do you employ them, or the district...

Downey: Frequently I do myself. I've often said that if I were ten years younger I might get an office and employ four or five engineers to handle water-work. There's no limit to that water-work.

Baum: How do you select the young attorneys thatyou bring into your office?

Downey: Well, we generally take it up with the University of California or Stanford and get them to recommend men. We have two here in the office now who were highly recommended by the University of California. I think they were both on the California Law Review. That's always a good sign, you know. We have awfully good men here.

Baum: I know your son is from Stanford. Do you try to get men from Stanford especially?

Downey: Jack is a graduate from Stanford and he likes to see what the people at Stanford say about a man. We don't have any Stanford men here now.

Baum: Then you take a good man from whereever he comes.

Downey: That's right.

Baum: Do you ever get them from out-of-state?

Downey: No, I don't think we have. From time to time they've sent me some man from the University of Michigan to talk to me, but I don't think we've ever gotten a man. It's a big advantage to have gone to school right here in this state. He learns so much about the fundamental law that you need in California. I kind of regret I didn't go to school here, but I didn't

know I was coming to California when I went to school.

Baum: What happens to these attorneys you employ? Do most of them stay with the firm or do they go into their own firms or government work?

Downey: It depends. Some of them like to get out for themselves. I rather think we're closely knit right now. I think the men in the office, they like us and we like them and they do very good work. Of course, like any organization, some people don't get along with other people.

Baum: Do most of your men stay with you?

Downey: Well, there have been some who have gone. Clyde acts rather as the manager, somebody has to do that. He doesn't assign the work in that sense, but he knows what's going on in the office and takes care of the bills, all those things.

Baum: What do you call these attorneys who work for you?

Downey: I call them my assistants. I frequently have to call one of them in and I always introduce him as my assistant.

Baum: I think they used to call them clerks.

Downey: Yes, clerks. I don't use that myself, but it is used, I know. In San Francisco they have the senior partners and the junior partners. Sometimes they introduce a man there as "one of my junior partners."

Baum: I was wondering whether you had run into cases of conflicting interests among your clients?

Downey: Well, you run into that all the time, Mrs. Baum. Many people have some claims to make against districts and they don't know that I'm disqualified. I tell them, "I can't take that. I represent the district, or the trustees or the directors." That's very, very common and sometimes embarrassing because people don't like you to say you can't take their case.

Baum: What do you do? Do you recommend some other firm?

Downey: Sometimes. Sometimes you say, "So-and-so is a good man, but you've got to make your own choice." It may be somebody I'm very friendly with, you see. I don't know anything that's more common than that.

Baum: Do you try to be on the same side usually in certain types of cases, like in an accident case do you try

to be on the plaintiff side or the defendant side all the time?

Downey: That again is a matter of just how you feel about it although insurance company attorneys generally act for defendants. I always take the plaintiff side. I'm sure that was due to the fact that when I first started to practice I always thought somebody was being wronged. Sheridan and I at that time had most of the plaintiffs' cases that arose. There weren't many automobile cases at that time. We had most of the cases where maybe the streetcar company or the P.G. & E. had killed or hurt somebody and we'd love to sue the P.G. & E. Generally speaking we were suing--the plaintiff was suing--these big corporations or these rather rich people. I know now my philosophy was all wrong, but that's the way I thought then. Jack Pullen and I, we had a case where we sued practically all the important men in town. We were terribly enraged about that case. Some woman stubbed her toe on the sidewalk and got hurt so we sued all the council and everybody who had given bond, and they were rather wealthy men and their bond men. We had so

many defendants we practically couldn't handle it, there were too many things to be done. The funny thing about that case, during the interim before we came to trial, it never did come to trial, we sued the husband of the woman who got injured and this man fell in love with his nurse and his wife sued for alienation of affections and we never did get to the trial of the case. But that's the way those things went when we were young.

What I'm trying to say is that in my training, I sued the big and important boys and I've never gotten away from that entirely. Now we have all these automobile cases and maybe the plaintiff is wrong and maybe the defendant is wrong, but they are all together different because they are generally represented by insurance companies on the defendant end of it.

Baum: Don't you represent the insurance companies, or your firm?

Downey: The insurance companies I speak about here are life insurance companies. California Western States Life Insurance Company, we are their consulting counsel.

Some of those cases are cases where the company is sued, maybe on a policy of life insurance, and we have to defend them. My son doesn't mind these cases. He likes them. He generally takes care of them.

Baum: In water cases, you are generally on the public district side?

Downey: Generally. When I was a young man we used to say "Although the rich may not be always wrong, and the poor not always in the right, but God had made it right, that men should fight, The battle of the weak against the strong." That's the way I felt when I was a young man.

Baum: Who do you think are the outstanding water attorneys in this region?

Downey: You've heard me speak of Martin McDonough very often. He's undoubtedly outstanding. There are other water attorneys here connected with some of the agencies, for example the Reclamation Bureau. They have their own attorneys. There's John Bennett, Bill Burke, able men. They specialize in water work, but they represent the Bureau. There are a number of lawyers connected with the State Water Department who are

outstanding men.

There's a firm of Landis and Brody who are doing some of that work. Brody was the attorney for the Reclamation Bureau here a few years ago and has gone into private practice. There will be more, but there are not too many now. Occasionally a lawyer will get a matter involving water law, Phil Dryer, but I don't know many here. If you had a big water case I guess you'd talk to Martin or I would recommend him.

Baum: What about these people who come to you and you can't take their case because you're on the other side?

Downey: That's right, and a good many people come to me and I won't take anymore water cases if I can help it. I try to talk them out of it or I suggest somebody. I've suggested Landis and Brody in many cases. Of course, Martin, when he was just getting started in this thing I turned over a lot of matters to him. But he's got his own business now. You get to the point that you can't take any more. There are a

number in San Francisco who do that work.

Baum: I know your work sometimes involves trying to pass legislation.

Downey: Yes, we have to get that. Right now I have on my desk two or three bills I have to look into to get legislation for the Port District or for SMUD or some district. I don't like that work, but you have to do it sometimes. You find some laws that have been enacted aren't clear. You have to clear them up. I don't like to go up there and buttonhole legislators and try to get them to vote. During the time I was with the Reclamation Board we had many, many of these cases which required action by the legislature, but those were big cases and we'd have hearings before maybe the entire Assembly or the entire Senate, maybe a committee. I don't mind that. I don't like to work individually with a certain senator or assemblyman or congressman.

Baum: You handle a lot of public district work that I think would automatically go into legislation. But do your partners also have that type of work in their work?

Downey: Not as much. Every lawyer once in awhile has something. I don't like to be a lobbyist.

Now, you take some matter the Irrigation Districts Association is interested in. They have a very able staff of men who do that kind of work and I can work with them. Sometimes you just have to appear before committees there and testify.

Baum: Do you have the type of client who comes to you with all his legal problems, much as a person would go to his family doctor?

Downey: There are quite a number like that.

Baum: Do you handle that type of client yourself or do you pass their work out in the firm?

Downey: It depends on what it is. I generally talk to them and sometimes those problems can be more difficult than they look. Sometimes they involve a personal angle. I'll do them if I can or maybe I'll ask one of my assistants to do them.

Baum: Would you recommend that each person have a family lawyer?

Downey: Well, it's nice if you can do it, if you've got enough

work to require it. Mr. Brand has a great many of those kind of people.

Baum: What kind of work do you refuse to handle?

Downey: I don't handle divorces or family troubles. There's an exception to all these things. Sometimes you have to, some old friend. They just want to talk to somebody. You're not trying a divorce case for them, you're not making a property settlement, but you have to talk to them. You'd be surprised how much of that sort of thing you do do in the course of a practice. And sometimes you have to get a divorce for somebody. Women, for example, are very dependent on somebody advising them in critical periods like that, probably more so than a man. I have to be a father confessor often for somebody.

Baum: You would handle a divorce case in some rare instances?

Downey: A very rare instance.

Baum: Do you handle criminal cases?

Downey: No more criminal cases. They are not as desirable as they used to be. But there's always the exception, you know. Somebody comes in and they have some particular problem and they may be able to put it up

to you in such a way that you feel like going ahead with it.

Charity Work

Baum: Do you take charity cases?

Downey: Oh, we do a lot of that work. I don't call them charity cases. Somebody really needs somebody to do something for them, I've got quite a lot of that. My son recently organized the Legal Aid Society here and they do a lot of work of that kind. They have quite a staff of volunteer lawyers and they have a man who's there on a paid basis. They are supposed to only do work where it's required on account of the client being indigent, but that's becoming a big field now, or at least a lot of work. They also, I think, have a panel here that takes care of people at rather lower fees, they do the work without charging what they normally would charge. The Bar Association has a schedule of fees and sometimes I wouldn't even think of charging as much as that, but I'd rather not charge anything at all.

Baum: Your vary your fee according to the person's ability to pay?

Downey: I don't have any standard fees I go by.

Baum: In this Legal Aid Society work, who pays the expenses?

Downey: You mean of the man who is employed?

Baum: Yes.

Downey: I think the Bar Association does that.

Baum: And how much time does the average attorney volunteer?

Downey: I think half a day a month or a day a month. I know quite a few of them. A number of the boys here in the office volunteer their services. Jack is in charge of that and I just know in general what he does.

Baum: That's quite a problem for some people, those who need and cannot afford legal advice. How do you think that should be handled? Do you think it should be done in a charity manner?

Downey: I don't know that there is any other way to handle it. I think of some of the people I have acted for and never made them a charge. I wouldn't want to make them a charge. There's a woman, for example, who was our housekeeper for many years, a Danish woman. I wouldn't charge her ten cents for anything or her daughter. That same situation exists for

other lawyers. There's a lot of that work done that you don't hear anything about.

Baum: You approve of the Legal Aid Society?

Downey: The Legal Aid Society is undoubtedly necessary. They try to sort out the people who can't afford to pay from those who can. Where a person has work to be done and can arrange with an attorney to pay on a contingency basis, even though they haven't got anything, they arrange it that way I think. I'm sure they do a lot of work and I have no doubt it's work well done.

COMMENTS ON POLITICS

A Supporter of Hiram Johnson

Downey: I supported Johnson for governor. I was in Devlin's office at that time and I was against the Southern Pacific anyway, although they were attorneys for the Southern Pacific. I supported him when he ran for vice-president with Roosevelt. I was a Progressive then and proudly wore a red bandana, a Bull-Mooser. And Johnson was helpful to me in my flood control measures in Washington. But when he turned on Wilson and the League of Nations, that was my last love of Johnson.

Baum: So you didn't continue to support Johnson after that?

Downey: I had nothing to do with him. Johnson was the worst hater the world has ever produced. I don't know how he could hate people as much as he could.

Baum: Did you favor the League of Nations?

Downey: Oh, very much so.

Baum: How did you vote in 1924, between LaFollette and Coolidge and Davis?

Downey: I voted for LaFollette.

Baum: In 1928 whom did you support?

Downey: Al Smith.

Baum: In 1932, before the election, in the primaries, I think California was split over Garner or Roosevelt.

Downey: I had nothing to do with it.

Baum: You weren't in state politics?

Downey: Only as I was dragged into it by Sheridan. That was before his election as Senator, wasn't it? But he was gunning after McAdoo right along there for some time before he ran against him.

Baum: McAdoo was for Garner in 1932, I think.

Downey: I don't know.

Sheridan Downey, United States Senator

You know, you really ought to be writing Sheridan's biography here. He was a genius pretty near, certainly a dreamer. We both left college about the same time and he went to Wyoming and became the district attorney there and I came out here. He wanted to make a fight in politics at that time, he went right into politics like a duck to water and as usual he took the big boys on. Senator Warren was senator from Wyoming at that

time and the state of Wyoming had everything. We had no population, but we had Warren and he got the goods. He was the chairman of the Appropriations Committee and he had another senator there from Wyoming who was chairman of the Judiciary Committee, two of the big committees of the Senate. He was really a power in the United States Senate. Nobody could beat him. Couldn't contest the election with him. That was just Sheridan's meat in those days. He made a fight on Warren. He pretty near beat him, not quite. Warren was elected. Sheridan by that time had to sell his stove and all his furniture to get enough to live on. That's the type of man he was, an adventurer. So he said, "I'm through with politics, I don't want to have anything more to do with it." And he left there and came out here.

Then he went in with me. That was later, after Jack Pullen and I had established our firm and Sheridan came in. He held his nose right to the grindstone and said, "I don't want any more politics." He was sort of disillusioned by some of the things that went on in Wyoming. So he practiced law and he practiced

hard. As I say, as a trial lawyer, he was an outstanding man.

Then, after a number of years, he began to get tired of that. He'd take on something and then he'd get tired of it. He didn't like some of these cases. He didn't know why he should fool around just defending men charged with crime and getting them off. So he decided to do something else.

Baum: Did he specialize in criminal cases?

Downey: Well, trial work. We both did, but he was particularly good in some of these cases, in fact in all the trial work. We worked very well together on the trial of a case. He liked to do the work involved in the examination of witnesses and the cross-examination; I liked to take care of the legal end of it. We had great success, I think.

But anyway he said, "I'm tired of all this stuff. I'm going to quit this law business." He was disillusioned again. "I'm going out and make some money." He hadn't had any money since he'd left college, or even then. He said, "Anyone can make money. I'll

make a million dollars in a year, I'll bet you I will." So then he started out to make money. That went on and on and on. At that time there was no real estate market.

Baum: This was in the 1920's?

Downey: I guess about that. It wasn't the era of the depression although it went into that. He didn't make a million dollars, but he lost probably two or three million. That's where I got complicated because I was on some of his obligations.

So that went on for a long time, until he was so badly busted that he never could be financially rehabilitated. Then he lost all interest in that, except he continued to pay what he could, and he still is paying right now. He wouldn't go through bankruptcy.

Then he said, "I'm going into politics and reform the country." By that time I had gotten so involved with him that I had to make another break. Of course, he went into politics and that's all he did for a number of years. You know the end of that, he finally got out. A novel could be written on some of those things.

Baum: Why was Sheridan selected to investigate the Rolph administration? That sort of put him into politics.

Downey: I'm sure that's true. That was about the time when he was beginning to want to get into politics. He was a close friend of Senator Jack Inman. I think Inman conceived the idea of making this investigation and Sheridan acted as the attorney and did quite a job, as he always could do when he was cross-examining people or carrying on that sort of thing. I've forgotten just who he was investigating. He may not have known, he was just investigating.

Baum: I think that's what made his reputation.

Downey: That gave him a start, but what really got him going were these pensioners.

Baum: What did you think of Townsend and the Ham and Egg plan?

Downey: I didn't think much of the plan. Of course, you admired Townsend. He's an idealist. I don't think he ever thought very clearly, but he certainly started the movement that's still with us. I believed and Sheridan did.

Baum: What did you think of Upton Sinclair's EPIC?

Downey: I doubted that too. There was a lot of fuzzy thinking at that time, mine included. There were a lot of things I liked about Upton and he and Sheridan had many contacts and finally ended up arm in arm for the governorship.

Baum: Did you support Sinclair in that election? I think a lot of Democrats thought that was a little bit far-fetched and they didn't go along all the way.

Downey: I don't think I voted for Upton. I voted for Sheridan and campaigned. I did a lot of work for him.

I told you just a thumbnail sketch of Sheridan. He started in in politics and then got out of it and was driven out of Wyoming, so to speak. Then he got in to making a million dollars and all he did was accumulate debts for several million dollars. With a rising market, things might have been different. Then he got back into politics. He told me he was all through with politics after he left Wyoming. Then one day I was lying at home with a broken skull, one of my horseback accidents. I wasn't even supposed to

talk to anybody. Sheridan came in and he'd been somewhere, Arizona, and said, "I'm going to run for Congress." He hadn't been in politics in California at all. I said, "Sheridan, that's quite a job." "No, I'm arranging now to get the hall." He got the auditorium. Of course, I was there at the auditorium. That was the opening of his campaign for congressman. He hadn't had any state positions.

Baum: That must have been in 1932.

Downey: It must have been. He was defeated. He held this meeting down there. The auditorium seats about 5000 people. I think there were maybe 50 of us there, certainly not more. I was there. But that didn't daunt him a bit. He paid for hiring the auditorium too. He ran for Congress a couple of times and then he went up for the big stuff. Lieutenant-Governor and then senator. He went up fast when he went up.

Baum: I was wondering how Sheridan got along with Johnson when he went to the Senate.

Downey: When Sheridan went to the Senate, I'm sure Johnson was rather indifferent. In fact, most of the people

in the state, except the extreme pensioners, etc., were against Sheridan. He was elected largely on the Townsend vote.

Baum: He beat McAdoo though.

Downey: Yes, but McAdoo was pretty unpopular. It was a Democratic year, after the depression. Johnson is not the type who cared for anybody particularly except that he had some very warm friends. When Sheridan came there I think Johnson was rather indifferent to him. But they became rather close as time went by until Sheridan made a national broadcast answering Johnson on Roosevelt's third term. Johnson had made some nationwide broadcasts and F. D. Roosevelt asked Sheridan to answer it, which he did and did well. Johnson never forgave him for that. That was a typical Johnson reaction. He hated Sheridan from that moment on and so bitterly, it was a horrible thing that a man could hate so much. But after Johnson's death Sheridan became very helpful to Mrs. Johnson, and there was a period in there before Johnson broke down when I think he and Sheridan became rather close again.

Baum: Didn't Sheridan support Johnson for the Senate in the 1920's?

Downey: I don't know. Those were the years when he wasn't in politics.

Baum: Sheridan's appointees were for all kinds of jobs, weren't they?

Downey: Everything. Of course, they were largely presidential appointments, but generally they follow the recommendation of the Senator, although Sheridan's relations with Truman became rather strained before he finally got out of there. They were very close when Truman went in as President. I recommended one man to Sheridan for appointment as a judge, who was a Republican. He was a good man and a very close friend of mine. Sheridan didn't want to recommend him, he wanted to recommend somebody else, but he finally did recommend him and he got the appointment. Truman made that appointment. But after that all hell burst loose. The Central Committee met and they weren't going to have anybody appointed to these offices who wasn't a Democrat and they never did after that either,

at least under the Truman administration so far as I know. That created a controversy at that time. The funny thing about it was, he was a Republican and when Eisenhower came in he was about the only Republican available for a certain appointment, so he went on up. A wonderful man.

Baum: When you recommended appointees...well, first of all, you chose men you knew.

Downey: Not always, generally. In that particular case I did. But very often they came around to you, especially with Sheridan, because my relations with him were so affectionate. If anybody heard of any appointment about to be made by the President, or where the United States Senator would have some say about it, they often came to me, "Would you recommend me to your brother." Most of those were solicited. In some cases, in this case I just mentioned I made the suggestion myself to Sheridan.

Baum: Didn't that make you quite a political power?

Downey: People didn't know about it. That's what worries me about some of these conferences I'm having with you.

You tell people and they'll spot you. No, it didn't. I think that was just a natural thing to go to Sheridan's brother. Sheridan and I were so very close. Some of the solicitations were rather absurd, you know. Some did you some good and some didn't.

Baum: Did you consider political problems in recommending these people, as to what groups they might be acceptable to?

Downey: I didn't, and I don't think Sheridan did. I give Sheridan credit for his nominations. The appointments that were made by his recommendation, I think, would stand up very, very high. Most of them were, even the appointment he made of the Director of the Income Tax Department, they tried to find something wrong with him but never succeeded. Of course, that's one place honesty is essential. The only thing you could ever say about that particular appointment was that he was very friendly with people and sometimes did things that he shouldn't have done. I don't mean anything corrupt, everything legal, but a public officer who likes people and wants to do things for

them sometimes goes too far. Even I find that difficulty and I'm not in public office and never would be in public office. That's one reason I wouldn't like to be.

Baum: I wondered why Sheridan resigned from the Senate before the end of his term.

Downey: You know he got sick there. Later on, you mean.

Baum: Yes, 1950.

Downey: He didn't want to stop. He wanted to go on. I wanted him to get out of there for a great many reasons. He was overworked, he was sick, too much strain. We carried on long distance phone calls, and finally his wife, who agreed with me and his son, Sheridan Jr., we all ganged up on him and he agreed not to run. But then the actual resignation, I think, was done so that Nixon could get that priority. Sheridan likes Nixon and Nixon likes Sheridan.

Baum: Then this was a personal friendship...

Downey: Sheridan by that time didn't like Truman, he didn't like the Reclamation Bureau, he didn't like the powers there. He was happy that Nixon beat Helen Gahaghan Douglas. He didn't like her either.

Baum: How did you vote in that election?

Downey: I didn't vote for Helen Gahaghan Douglas. I don't believe I voted for Nixon. I must have though, unless I didn't vote. Sheridan claimed when Nixon was investigating Hiss, that every member of every Communist cell in the United States was alerted and told to go out and report things that were derogatory to Nixon, some of them the truth and some not the truth. And that was where the bitter fight against Nixon began and has never ceased. Sheridan says the fight against Nixon is really an unjust attempt by the Communist Party to destroy him.

Maybe Sheridan's feelings in so many matters arose from the attempts by the Communists in Washington to get him like they tried to get LaFollette.

Contact With California Governors

Downey: Let me say a word about the governors you ask about. I'm very careful what I say about the governors. I've had the confidence of some of the governors. Rolph, Merriam, Young occasionally. Culbert Olson,

maybe, I don't know. He could be impulsive and explosive, you know.

Baum: Were you the conservative influence on Olson? Keep him from getting too wild?

Downey: No, I don't think I was. Culbert--he was a man who could be very drastic. I talked or wrote to him about offices and appointments and things like that once in awhile. I talked to Warren many, many times. I wouldn't use the dignified term "consult", but I talked to him about many, many matters. The set-up of many of his organizations like the Water Board, the Railroad Commission. Yes, I talked to him often. We were on a basis where we could talk to each other. I had the highest regard for him.

Baum: Did you ever come into contact with Clem Whitaker, who worked for Warren?

Downey: No.

Baum: What was the basis of your friendship since he's a Republican and you're a Democrat?

Downey: I've know him for many years. He was interested in

our proceedings, this SMUD matter, before the Public Utilities Commission. He was then the Attorney-General. He wanted to talk over certain of the aspects of it. Then, when we got to this organization... The Sacramento Valley Water Users. There has to be some adjustment between the Reclamation Bureau and the owners of land along the Sacramento River and the American River as to what water is to be sold them from Shasta and the price, he was very much interested in that. We finally signed a memorandum agreement in an attempt to work that out. He signed that for the state. We talked that over. So many of these things. It was nothing just to call him up and walk over and talk to him a few minutes or go out to lunch with him. I'm very, very fond of Earl.

Baum: You say he consulted you on appointments sometimes? What kind of qualifications did you recommend for people?

Downey: Well, for example, when they first set up the Water Board he was interested in knowing who would make good men there and I gave him my views on that because I

was of course very familiar with the people who were active in water matters.

Baum: Then was it primarily in water matters that you talked with him or were there a lot of other subjects?

Downey: A lot of other things too. I talked to him particularly about this fight with the University faculty, when they had this fight on Communism, on the loyalty oath. Warren asked me to go on the University's Board of Regents. I couldn't take it at that time because I was so tied up. That was at the time they were having that fight on Communistic activities and so forth. I didn't take it, I wish I had now. That's quite a Board. I would have liked to have been on it. I have decided views on the loyalty oath, and the funny thing about that was that the Regents asked me to take their case on that. I was on the opposite side, you know. I just told them "No." I was on the other side.

Baum: You were against the loyalty oath?

Downey: Yes, I was against the loyalty oath. I talked it over with some of the men there, the instructors.

They signed it, they just said, "Oh well, what the heck." It just seemed to me it went too far. I felt that if I was a professor I wouldn't take that oath either. I don't know why, except it seemed to me unnecessary to do it.

But Warren, I did have very close contact with. He comes drifting into the office here occasionally when he comes away from Washington. It's quite something to see the Chief Justice of the United States walking into your office, "Hi." He's just that informal. I have been not close at all with Governor Knight. I was very much afraid when he went in, but I think he's made a good governor. He got me on one of his committees now, the Citizens Committee on Water Problems.

United States Senators Kuchel and Knowland

Baum: Do you recommend appointees to Kuchel or Knowland?

Downey: No, I don't think I have. I'm close to Tom Kuchel. I have written to Knowland about appointments, but I've never been soliticted by either of them to make recommendations.

Tom Kuchel is a very friendly man. He's a fellow you can talk to freely. I don't think he's ever asked me my opinion about any appointments. I'm sure Knowland hasn't, but I've made some recommendations to him which he didn't follow, I don't think.

Baum: How did you become acquainted with Kuchel?

Downey: Tom was here in Sacramento, he was Controller for many years. I knew him. I had a number of dealings with him when he first went to the Senate. He has always been very helpful. He didn't have the power Knowland has, but he was an easy man to work with.

Baum: You supported Kuchel in 1954, didn't you?

Downey: Yes. I've supported Kuchel twice now. I'm fond of him. He's very warm, you know. Knowland, lots of people think, is rather cold. I haven't found him that way. But Kuchel is a human type.

Baum: And he's done a lot of work for SMUD? Is that right?

Downey: Yes, he has. And for our port. So has Knowland.

Baum: Is that why you thought you should support Kuchel instead of...was it Yorty? In 1954?

Downey: I think he's made a good senator. I never cared particularly for his opponents on the Democratic ticket.

Baum: How did you come to know Knowland?

Downey: Here's the story. A number of years ago I was representing newspapers of California before the legislature and there was a law that had been enacted which forced the payment of a use tax. That was to take the place of a sales tax because they couldn't collect a sales tax where the goods were purchased out of the state. We finally fell to the fact that newsprint was within that law and was being taxed. Practically all the newsprint came from outside the state of California and that tax was a heavy burden. We didn't think it was fair for many reasons. So the newspaper people, being like all of us, didn't want to pay any more taxes than they had to. So they conceived the idea of amending the law to exempt newsprint from the tax. We had a very outstanding man who handled the legislation. The business was confided to him to get the bill through the legislature that would exempt newsprint from the use tax. I didn't have much to do with the lobbying for it.

Baum: This was done by another man in your firm?

Downey: No, another man in the newspaper association. Anyway, he handled the legislation and I sometimes conferred with him.

So he got the bill through the legislature exempting the newsprint and that was quite a saving to the newspapers.

Here's the point of the story. When the count was made of people voting for and against, there was only one man in the legislature that voted against it, and that was Knowland as I remember. I couldn't help but admire the man because he just said, "No." He did it undoubtedly because he was leaning over backward on a matter in which he was interested, his father owned the Oakland Tribune. So I had a secret admiration, although he was against my side of the case. He never knew it. I just met him, that was all.

Years went by and I became very opposed to his foreign views. Finally, when I was in Europe one time, he was elected to the Senate. He became rapidly a power. And the funny thing about it is, while

I've been against him on his foreign policies and on a good many of his domestic issues, the more I've seen of him the more I've come to like him and respect him. I admire his ability and courage. He's got great ability. He's got great energy, he's got infinite capacity for work. I've seen that at a distance.

So finally I became very closely associated with him in connection with this SMUD matter. That's another thing, I know he encountered bitter opposition to what we wanted him to do and what he did do from the P.G. & E. I liked him for that, it took courage. I think he's got the qualities of a statesman, though I don't agree with some of his views...and I'm beginning to waver on that too. He's made a number of speeches here that have been very impressive to me. I might become a Knowland man soon--all the way, and vote for him for President, Democrat though I am.

So anyway I've become very fond of Knowland. He knows I've been against him politically. One time he said to me, "If Eisenhower wins and we elect the Congress, I'll be chairman of the Appropriations

Committee." And he winked at me, knowing I was against Eisenhower. Well, he didn't win, I don't know what the story is now.

But he's a man.

Baum: You say you offered him your support if he runs for governor?

Downey: That's another question, maybe I'll support him for President. Arthur Krock has one of those gossipy articles on political matters in the New York Times and he has a big two column article on what is Knowland going to do. He thinks he's just maneuvering to be in a strategic position to take off for the presidency in 1960. Knowland said to me on a number of occasions..."you know people never believe what a politician tells them"...speaking about Sheridan retiring from the Senate, "I tell you, Sheridan is dead right. This thing kills you." That was when I was back in Washington and Sheridan had resigned, and the way he works now is terrific. You go into his office about six o'clock and you might stand a chance of seeing him, he might be in there. The rest of the day he has all kinds of appointments with members of the cabinet and so forth. But he's on the job at six o'clock and at twelve at night.

CIVIC WORK

Baum: I want to ask you about your civic organization work.

Downey: I can give that to you very quickly.

Baum: You told me about this interesting problem you had in the U.S.O. over the racial question.

Downey: Yes, we had this interracial unit. I was president of the U.S.O. and there was a lot of fighting about that, but we stood our ground and maintained this interracial unit. It was a great success, I believe. It was for all the races. The white people and all the other races went there and they seemed to get along well. Then we had another unit which we used just for the benefit of the white people and eventually we took all races into that too. There were a lot of soldiers out here, Negroes. You go into the interracial unit and the boys would be mingling together and getting along very nicely.

I was the chairman of a fact-finding committee here, shortly after the war, on hospitals. Like every place else, our hospitals had been run down and we

didn't have enough. As a result of that factual report on the necessity of getting additional hospital facilities here, we had these drives for additional beds at the Sisters Hospital and at the Sutter Hospital. The Sutter Hospital raised over two million dollars, I think, and the Sisters Hospital raised about a million. We had adequate hospital facilities at the time but now our growth is giving us trouble again.

I didn't take much part in the campaign, but I think my report...they call it the Downey report... was rather the fundamental basis. I've always been a little bit proud of that.

Baum: You've also worked on Community Chest, haven't you?

Downey: Yes, I was president of Community Chest. That goes back a long ways.

Baum: 1933.

And the Boy Scouts, you've been on that a long time.

Downey: I was president of the Golden Empire Council of the Boy Scouts. That embraces several counties here in Northern California. I was always very fond of that

work. I'm still a trustee of the property and funds of the Boy Scouts, but for a number of years I put in a lot of time on that.

You know, my life seems so unimportant. I've done some things in my life; nobody knows about them, thank goodness. (laughter)

Baum: You were on the California Museum Association.

Downey: Well, that wasn't much. They have the Crocker Art Gallery managed by this Museum Association, called the Crocker Art Board. I'm on that board. I recently resigned and they haven't accepted my resignation. I've been on that for a good many years. It is quite a museum. It isn't like some of the museums we saw in Europe, or even in Washington, but it's a good museum.

Baum: And you were on the Sacramento County Probation Commission, 1947 to 1950.

Downey: I worked hard on that. They were having a reorganization of the juvenile probation department. They had to get a new board and I went on it. That was finally worked out and I got out. Not very nice work.

Baum: What? Juvenile delinquents?

Downey: Well, the problems of delinquency and all. The operations of juvenile halls, it's a little depressing. But it has to be done. Getting rid of the probation officers in that office and setting up new ones.

Baum: When was the work you did on the off-street parking revenue bonds?

Downey: It would be a guess, probably four or five years ago. I was representing the City of Sacramento on that. We took this property for off-street parking. We had to condemn...there was a lot of opposition at that time, but we issued these revenue bonds. They are now making tiers, double-decking them.

Baum: What was the opposition?

Downey: A number of people had parking lots of their own and they didn't want to get into competition with the public. The usual thing. Some people thought it was socialistic for the city to go into that sort of thing. There was the opposition of a number of the property owners whose property we took. Some people claimed it was just a device of Breuners to get a parking area across from their store. But it worked out.

Baum: Was there any fear it wouldn't pay?

Downey: Yes, a good many people thought it wouldn't pay, but the bonds have paid. In fact, we've accumulated enough from the bonds we sold before in income to handle this extra expense, although I haven't handled that.

Baum: I would expect that the downtown merchants are now very pleased about it.

Downey: Oh yes, I think everybody recognizes now that it's been a great success.

Baum: Are you a member of the Chamber of Commerce of Sacramento?

Downey: Yes, the firm is.

Baum: Are you active in those affairs?

Downey: No, not particularly. Oh, there are several affairs come up that you have to participate in, but I don't do too much of it.

Baum: I notice that they appointed you as chairman for the Folsom Dam dedication.

Downey: Yes. That's true. That was sponsored by the Chamber of Commerce. As a matter of fact, we had an election. I wouldn't serve unless I was elected. They called

together all the people who were interested in water and then they elected me. I got this award that tells the story. There wasn't much to this, except it was a lot of work. At the Chamber's annual dinner the other night they awarded me this.

CITATION, ANNUAL PRESIDENT'S AWARD SACRAMENTO CITY-COUNTY CHAMBER OF COMMERCE

"Stephen W. Downey, of Downey, Brand, Seymour & Rohwer, was Chairman of one of the most highly organized committees this Chamber has ever had in the 61 year history; to stage perhaps the largest event held in this area in many years. Because of the high acclaim he has earned as an authority on water problems, he was named Chairman of the Committee for the Dedication of Folsom Dam. Through this tremendous project this Chamber earned world-wide publicity from newsreel, television, newspaper and radio coverage. This Chamber received great recognition for a well executed day of events which took more than a year of planning by Mr. Downey's Committee and the co-ordinated activities of nearly 1,000 persons."

Baum: I see that you have been to Europe a couple of times.

Downey: Oh my, yes. Had a good time too. The last trip was really for the purpose of going to Scandinavia. I wanted to see the welfare state. I loved Denmark and Norway.

Baum: What was your interest in the welfare state?

Downey: I just wanted to see how they were operating. Denmark is certainly a welfare state. Well, all of them are, Denmark, Norway, and Sweden. Of course, many people who are opposed to them hope they will go broke pretty soon. But they were awfully nice. I like what they are doing for all the people. We are not in the class with them in many respects. Oh, I loved all the trip. England. Ireland where my ancestors came from. Switzerland.

APPENDIX

Further Biographical Information

Childhood in Laramie

Baum: How would you describe your mother's parents?

Downey: I never knew my mother's father. I knew Mother's mother. She was kind of an adventurer too. She was still traveling around the world when she was eighty years old. We used to say she had gypsy blood.

Baum: What did your mother look like?

Downey: My youngest daughter looks just like Mother, small but wiry, wiry, chuck full of energy. She loved people and people loved her. She was always doing something, she didn't know what it was to be quiet. But she told me she couldn't have taken care of her children unless she had a rest of about fifteen or twenty minutes at noon time.

They tell the story that when she came through Chicago on the way to the University of Michigan she wanted the three girls to see the theater so she took the whole bunch of them to the theater, carrying all the things she was taking with her to Ann Arbor. That was Mother.

Baum: She must have been awfully busy just taking care of the family.

Downey: She was. Of course, we were all born and reared right in Laramie, no hospitals. We had help generally. You could get help cheap in those days. But no toilets, washing day, baking day, ironing day. No electrical gadgets.

Baum: Did you have a large house?

Downey: A very large house. Every once in awhile when another child would come into the world we'd put on another room. It was all on the ground floor. It was right in town.

Baum: But you had a cow?

Downey: Oh yes, we had two or three cows and a few horses.

Baum: What did you think of the schools in Laramie? Did you like grammar school?

Downey: I don't know whether children are just supposed to say they don't like it and so they don't. No, I don't think I liked it. It was like going to Sunday School. I used to hate to go to Sunday school, at least I always thought that, but Mother cured me of that.

Baum: Did you feel you got a good basic foundation in your elementary education?

Downey: Yes, I certainly did, just as I feel that the environment under which I was raised in Laramie was a good environment. We had lots of good times in Laramie, at school and in the home and playing football. I played on the University of Laramie football team. They didn't have much of a team then, now they do.

Laramie was just a country community right on the prairie, and it was cold there. Fifty below zero was nothing-rugged living. It might seem like it was a very dry life, but it wasn't. We had awfully good times. We'd go twenty miles out in the country and cook dinner, drown out gophers and hunt, very adventurous. There were all the outdoor activities. Right within a few miles of Laramie you'd see a herd of several thousand antelope.

Baum: Did you have lots of children to play with or just your family?

Downey: Oh, there were lots of boys there and girls.

Baum: Did you have a library in town?

Downey: Oh, Father had lots of books. The whole family loved books. My father used to read a lot to the family. He had a beautiful voice. Maybe after dinner he'd sit down and read from the Iliad or the Odyssey. We

enjoyed it. We weren't highbrows at all but there wasn't anything else to do. No movies, no radio, no TV.

They'd have these literary clubs. Someone would come in with a paper on Browning, someone with a paper on Tennyson. Nobody thought of going anywhere except out to see friends. And the blizzards-you could get lost between the house and the barn. Mother and Father and my oldest sister all had their own groups. I can remember many a night peeking around the door to hear somebody giving a paper. Bill Nye maybe.

Baum: Were there any art groups?

Downey: There probably were. Mother painted paintings in addition to her painting china. She started going away every other year to Chicago to take lessons so as to keep up with her painting. But I don't have any recollections of any art groups.

Baum: Did you have a theater or anything of that kind?

Downey: There was a barn they called a theater and once in awhile somebody would come there.

Baum: Did your parents participate in church activities?

Downey: They were both strong Episcopalians.

Father was very active in the church and Mother too. They were then trying to build the cathedral at Laramie and they were having trouble getting money. They were building that cathedral during most of my youth. It was finally built, a very pretty little cathedral, built since I left Laramie. I don't remember any great many social activities in connection with the church, but there undoubtedly were.

Baum: Were your parents very religious?

Downey: Well, they were more religious than I am, I'm sorry to say. They never failed to go to church. I fail very often. We always started breakfast with the Lord's Prayer, the whole family. Everybody would kneel down and say the Lord's Prayer. That was a time when we'd play pranks. We had a dog there and he used to always go out in the kitchen when we were saying the Lord's Prayer and steal anything he could find in the way of meat. And we had grace said every meal. Those things don't happen in my house. They do happen at my childrens' houses, but I've never heard them say the Lord's Prayer like that, kneeling down on the floor.

Baum: What happened if you got caught playing pranks?

Downey: I always said we did get whipped once in awhile but Mother said she never whipped any of her children. Mother was a good disciplinarian. Father, I don't think he ever even reprimanded me, though he had quite a temper when he was aroused. We had very little of that in the home.

Baum: Did your father take much charge of the children or was that your mother's job?

Downey: That was Mother's job.

Baum: He must have been out of town a lot.

Downey: Yes, he was a good deal, always coming home with presents. He used to play with us some, football, baseball, but I think Mother was the disciplinarian. She was Napoleon.

Mother retained that energy of hers until near the end of her life. After Father died she held the family together. Then my oldest sister died. She had kept Mother in touch with the world, which Mother loved so much. She loved life and activity. When her daughter, the first to go, went like that. Sheridan and I had left home--and she never quite

recovered from that. She was nearly eighty when she died, but she began to fail then.

Baum: She must have been a lot younger than your father.

Downey: Yes, she was. She was only eighteen when she married Father. Father must have been then about thirty-five.

Baum: Did this big family of brothers and sisters get along well together or was there a lot of scrapping?

Downey: Very little. We all lived there in Laramie very happily. Then the girls began to marry and branch out. Sheridan and I went to law school and to California later on. I can't remember anything except happiness.

Baum: You say your mother was so fond of your oldest sister. Do you think she preferred the girls?

Downey: You see, the oldest sister never married. She was right home with Mother. She became very successful and rather famous in her scientific work. Finally she decided she'd take Mother around the world. Travel to Mother was just one of those wonderful things that came to people rarely. My sister took her around the world and oh, how she counted on that trip. The funny thing was that my sister got horribly seasick and she was sick practically all the time, but Mother

on the other hand, very healthy and robust, she wasn't fazed at all. Poor June, my sister, couldn't see the things she wanted to see, but Mother had the time of her life.

Baum: What businesses have your brothers gone into?

Downey: My oldest brother, Corlet, practiced law. He went in with Father in Laramie. He died some years ago. He was quite an active man in the state, a Republican. They were all good Republicans, and Sheridan and I branched off to the Democratic Party.

Baum: Oh, I just assumed your father was a Democrat from Maryland.

Downey: I suppose that was the Civil War tradition. He was a strong Republican, delegate to many of the national conventions.

I had another brother, he's also dead now. He was the kind of a man who did everything. He was driving a horse drawn stage just before he died.

The girls practically all married and left the state. As a matter of fact, there's no Downey in Laramie now. The girls married all over the country. There were two who didn't, June and the next oldest

to June, Norma. Norma early began to assume the burdens of the family. A domestic girl who loved children. She almost took as much care of me as my mother did. During World War I when my first wife died while I was in France, she immediately came and took my children. Just successively through the family she would assume the burdens--they weren't burdens to her--of raising all the children of my brothers and sisters. She just recently died. She was nearly eighty at that time. She certainly did her part, and she loved it. What a saint! The most selfless person I ever knew.

Children

Baum: Can you tell me a little more about your four children?

Downey: John, my oldest son, is a member of the firm here with me. Stephen is a colonel in the army, teaching at the present time at the Army War College. My oldest daughter, Wendy (she named herself from Peter Pan, she didn't like the name we gave her), is the wife of Henry Teichert, General Manager of A. Teichert Company, Contractors. The other daughter, Tink

(she called herself--Peter Pan again), is the wife of Dr. Frank J. Boutin, orthopedic surgeon.

All four of them went to Stanford. When my son Jack went to Stanford I thought he was doing a wise thing. He made his own decision, but I never discussed with him about going to Michigan. He was a fraternity man at Stanford. My other son was a fraternity man too.

Stephen went to the New Mexico Military Academy, he was very strong for the military work. Then he went to Stanford and was commissioned and went right into the regular army in 1939. That was the year they allowed a certain number of what they called "distinguished graduates in military work" to be placed in the regular army with the West Point Class. Both boys were wounded in the war and cited for heroic conduct.

Baum: What were your sons' undergraduate majors?

Downey: Stephen was always interested in international relations and he was interested in law too and took the work in law. Now, he's been trying to arrange his work so that he can take a course at one of the

universities and get a degree in international relations, but he's been too busy. I think John majored in law right in his undergraduate years.

Baum: And what did the girls take up?

Downey: Well, poetry mostly for Wendy. She stayed after she graduated there and wrote a book in poetry. She was always that type. Tink was one of those practical kids. She would do things that would have some realistic result right in her own home.

Baum: Did either of them work after they graduated?

Downey: Wendy went into the Army, the WACS, shortly after she graduated and continued until almost the close of the war. Tink got married and her husband was in the army so they were right in the military life. Her husband went right to Walter Reed Hospital. She was there and then they came out and she began having children and now she has five of them.

List of Major Cases for the Reclamation Board

In re Sutter Butte By-Pass Assessment No. 6, 191 Cal. 650

William Ash Co., v. Reclamation Board, 266 U.S. 589

Reclamation District No. 1500 v Riley, 192 Cal. 147

Sacramento and San Joaquin Drainage District v. Johnson, 192 Cal. 211

Sacramento and San Joaquin Drainage District v. Riley, 194 Cal. 624

Western Assurance Company v. Sacramento and San Joaquin, 72 Cal. App. 68

Sacramento and San Joaquin Drainage District v. Superior Court, 196 Cal. 414

Seufert v. Cook, 74 Cal. App. 528

Reclamation District No. 1500 v. Reclamation Board, 197 Cal. 482

Sacramento and San Joaquin Drainage District v. Riley, 199 Cal. 668

Reclamation Board v. Riley, 208 Cal. 661

Grant Report contained in Senate Document No. 23, 69th Congress, Second Session, (January 5, 1925)

Mr. Downey's Three Most Significant Cases

It is difficult to pick three cases out of many now buried in the past, but I'll take a chance and submit the following:

1. West Coast Life Insurance Company v. Merced Irrigation District, 114 Fed. 2d 654. (Cert. denied by U. S. Supreme Court 331 U.S. 718.)

In this case Merced Irrigation District brought a proceeding in the Federal Court to have confirmed a plan of composition of its indebtedness aggregating several million dollars under the Municipal Bankruptcy Act. The United States Supreme Court had first held this law unconstitutional and later reversed itself. Without a decree confirming the plan, refinancing of the District was impossible. In addition to the case itself, dozens of other collateral cases were pending wherein validity of the plan of composition was involved and also it was necessary to carry on legislative, legal and financial matters in Washington. The primary question in the case was whether the plan of composition was fair, that is, whether lands in the District could pay in excess of

the bond issue contemplated by the plan. The District relied upon a scientific study and report made by the University of California Giannini Foundation through Dr. Benedict based upon the examination of the taxpaying ability of the landowners. After elaborate testimony and argument in both the lower and the upper courts, the plan was approved and subsequently the District was refinanced.

2. Sacramento Municipal Utility District initiated proceedings before the California Railroad Commission, now Public Utilities Commission, leading to condemnation of the Pacific Gas and Electric Company's distribution system in Sacramento. This was to obtain valuation of the property desired to be acquired.

44 CRC 467-516

The opinion of the Railroad Commission is an outstanding authority.

After determination of the value by the Commission, the second phase of condemnation was begun, namely, a proceeding in the Superior Court for a decree of condemnation. Many legal questions of great interest were involved. Judgment followed for the District,

followed by an appeal and judgment was affirmed.

SMUD v. P.G. & E., 72 Cal. App. 2d 638.

3. Sacramento and San Joaquin Drainage District v. Riley, 199 Cal. 668, and particularly at page 687, et seq., is an outstanding authority covering the extent to which the State may by appropriation and otherwise aid in the accomplishment of the Flood Control Project. This case, together with In Re Sutter-Butte By-Pass Assessment No. 6, 191 Cal. 650, American River Flood Control District v. Sweet, 214 Cal. 778, and the other cases cited by the Supreme Court in these cases, gives a good history of the Flood Control Project leading up to the approval by Congress of the Grant Report thus easing the burdens of the landowners.

PARTIAL INDEX TO DOWNEY MANUSCRIPT

American River Flood Control District Act-1927 193-196, 240

Antioch, City of 219

Banks, Harvey 206, 213

Barnes, Harry 114

Bartlett, Louis 123

Barton, Colonel 47, 69

Benedict, Dr. Murray 96-97, 309

Boke, Dickie 116

Bonte, Harmon 187

Brand, Clyde H. 249, 251

California Irrigation and Reclamation Financing and Refinancing Commission 186-188

California State Bar 223

California State Reclamation Board 56,114,166,247,307

California Water Department 206-210

Cattle King 88

Centenniel Vein 3

Central California Irrigation District 197-200

Central Valley Project 148-154, 208-210

Civic Work 289

Cowell, Al 81, 118

Curry, Charley 47

Dabney Plan 39

Devlin, Bill 18, 266

Devlin on Deeds 22

Douglas, Helen Gahaghan 279

Downey, Brand, Seymour and Rohwer 249
Downey, Corlet 303
Downey, June 6-8
Downey, Sheridan 30, 111-116, 267-279
Downey, Stephen W. (Sr.) 1-8
Dunn and Brand 31
Durbrow, Bob 117
Dwyer, Bill 59-60
East Contra Costa Irrigation District 183-184
Edmondston, A. D. "Bob" 208
Elkus, Albert 129-130
Engle, Clair 209, 211
Etcheverry, Bernard A. 47, 57, 177, 193
Family of Stephen Downey 1-8, 296
Farmer, Milton 105
Folsom Dam dedication 293-294
Freeman, Frank 66
Friant Dam Site 108-110
Gadd, Peter 67, 74
Given, Bert 125
Grant, Mrs. Frederick Dent 47
Grant, Major 44
Grant Report 50
Grunsky Project 39
Haines, Judge 105-108
Havenner, Frank 141

Herminghaus case 87
Heron, Al 194
Herrington, George 100
Ickes, Harold 126-127
Inman, Senator Jack 271
Irrigation District Association 117-122
Johnson, Hiram 40, 266-273, 273-275
Jones, Herbert C. 61
Judges, appointment of 237-238
Kiesel, Fred 186
Knight, Governor Goodwin 283
Knights Landing Ridge Drainage District 167
Knowland, William 151-154, 202, 283-289
Kuchel, Thomas 151-154, 202, 283-289
Lambert, Charlie 216
Landis and Brody 259
Laramie, Wyoming 1-8, 296-298
Law, type of cases handled 29
League of Nations 266
Legal Aid Society 263
Legal Profession 220-265
Legal Study 9-16, 20-22
Loyalty oaths 282
McAdoo, William Gibbs 267, 274
McCaffrey, James E. 121-122, 147, 155-159, 161

McClatchy, V. S. 42

McDonough, Martin 240, 145, 216, 258

McIntire, Persis 32

Mason, J. Rupert 103

Merced Irrigation District 80-104, 182-183, 185-187, 308

Metteer, Charles 75

Miller and Lux 86, 105, 198-200

Miller, Royal 129-131, 155-159

Nevada 17-18

Nixon, Richard M. 278

Nutting, Franklin P. 96

Olney, Judge Warren 135-136

Olson, Culbert 235-237, 279

Pacific Gas and Electric Company 125, 142-145, 148-150, 161-165

Peck, Jim 92

Public Utilities Commission 137-143

Pullen, John F. 23, 30

Radin, Max 235

Reclamation Districts - general comments 166-192

Reclamation District 108 167, 169, 171-188, 217

Reclamation District 999 167

Reclamation District 1001 75

Reclamation District 1002 168

Reclamation District 1004 167, 185

Reclamation District 1500 56, 166, 169

Reclamation District - West Side Levee 167

Richardson, Governor 65

Robinson, C. Ray 197

Rohwer, Otto 250, 251
Sachse, Richard 141
Sacramento BEE 128, 157, 163
Sacramento Municipal Utility District 123-165, 247, 309
Sacramento Port District 202-205
Sacramento River and Delta Water Association 214
Sacramento River Water Rights 211-219
Sacramento-San Joaquin Drainage District 34, 51, 310
Sargent, H. P. 102
San Joaquin Light and Power Company 90
Seymour, Harry B. 31, 250, 251
Shinn, Bob 134
Sinclair, Upton 272
Spencer, Al 47
Straub, Thomas 136-137
Taylor, General 47
Thelen, Max 94-97
They Would Rule the Valley 113
Thomas, Colonel 1
Townsend, Ham and Egg Plan 271, 274
Treadwell, Edward F. 86-88, 105
Trials - general comments 238
Tule Lake Irrigation District 197
United States Board of Engineers of Rivers and Harbors 48
United States Bureau of Reclamation 109-116, 119-120, 215-216

United States California Debris Commission 38, 61

United States Reconstruction Finance Corporation 102-103

University of Michigan 9-16

University of Wyoming 7-8

Wagner, Walter 118

Warren, Governor Earl 153, 209, 235, 280-283

Water Rights cases 84

U. C. BERKELEY LIBRARIES
C091963107